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UNITED STATES OF AMERICA.

A MANUAL OF

THE LAW OF

Roads and Highways,

IN THE

STATE OF KANSAS.

SECOND AND REVISED EDITION.

By G. C. CLEMENS.

TOPEKA, KANSAS:
GEO. W. CRANE & CO., PRINTERS AND BINDERS.
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PREFACE.

The object of this manual is, to give full instruction to men who are not lawyers, concerning the law of roads in Kansas, and to give that instruction in plain, every-day language, so that anyone may understand it without difficulty. The author supposes that his readers will be mostly farmers, township officers, county commissioners and clerks, surveyors, road overseers and others, who are not lawyers, and some of them not learned scholars; and for this reason he has avoided the use of "hard words" which no one understands, and which only lawyers even pretend to comprehend. But, doubtless, this simplicity of language will be pardoned by even lawyers and judges, and the book will be found to be useful to them, too. The arrangement of the book will be easily understood, and will, it is hoped, enable every reader to readily find exactly what he chances to be searching for.

G. C. CLEMENS.

TOPEKA, KAS., August 1, 1887.

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PART I.

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INTRODUCTION.

The non-professional reader should understand this: That when the Legislature has passed a law, it is almost always doubtful what some provisions mean—what the Legislature intended by them; and it will frequently happen that even good lawyers will not agree as to what these provisions actually require to be done. This doubt can only be settled by the courts; and can be settled finally by the Supreme Court alone. Hence, after a law has been for some years in force, a man who reads the statute by itself may make many very serious blunders and mistakes as to his duty, for every time the Supreme Court decides any question with reference to it, that decision becomes just as much a part of the statute as if it had been originally printed with it. It is, therefore, highly necessary that the reader should know, not only the statute, but what the Supreme Court has decided concerning it. These decisions are referred to in this book by giving the volumes and pages of the reports where what is said in this book, besides what is in the statute itself, has been laid down by the court. There are now thirty-two volumes of "Reports" containing the decisions of our Supreme Court; but only the last fifteen of them contain decisions with reference to the present road law; and the reader must not rely too much upon earlier decisions, for they were made with reference to the old road law, which was different from the present one in several respects. Many questions not yet decided by our Supreme Court have arisen in other States, and will, in course of time, arise here; hence, the decisions of the courts of other States have been collected and cited in this book, so far as, in the author's judgment, our own Supreme Court would be likely to arrive at the same conclusions. As our road law is virtually copied from the Ohio statute, the decisions of the Supreme Court of that State are particularly important, and, hence, they have been freely cited.

I—*WHAT THE PETITIONERS MUST DO.*

THE PETITION.

Although power "to lay out, alter or discontinue any road" is given to the county commissioners in general terms, (section 16, chapter 25, General Statutes,) they have no authority to lay out, alter, nor vacate any road, unless a petition is presented to them by twelve householders of the county, residing in the vicinity of the road. The board cannot act in the matter of its own motion. (18 Kas. Rep. 386–396.) A householder is a person of full age, owning or occupying a house or a residence, and not as a boarder or lodger. (Gen. Stat. 1868, p. 1000; Compiled Laws, 1881, p. 920.) In short, a householder is an adult person, who keeps house as master or mistress of the house. One needs not to be married in order to be a householder (4 Kas. Rep. 120); and a single woman may be one as well as a man. The petition must describe the proposed road "with sufficient certainty to enable a practical surveyor to run it." (59 Indiana Rep. 54; 73 Indiana Rep. 454.) "The description of a highway embraces its beginning, course and termination. If in any of these particulars it is so uncertain that a practical surveyor cannot place it, the entire road fails." (73 Indiana Rep. 455.) The county commissioners have no power to lay out the road unless it will be of public utility (section 6), and, hence, the petition should aver that the proposed road will be so. Printed petitions, with blanks for the descriptions, etc., can usually be had of the county clerk. The proper form for a petition is given in the third part of this book. (See FORMS AND RECORD ENTRIES.)

PROOF AS TO PETITIONERS.

It must be *proved* to the commissioners by some evidence that the petitioners are householders, and the record must show that, upon some kind of evidence, the commissioners considered and decided that to be so, and it is proper to prove it by an affidavit. (18 Kas. Rep. 132, 398.) It should also be proved that the signatures are genuine. To merely say one is a householder is not *evidence*, for that is the very thing to be

proved; but the affidavit should state *the facts* which make him a householder. These suggestions will explain the object and use of the affidavit annexed to the form of a petition.

THE BOND.

One or more of the petitioners must give a bond, with sureties, to secure the expenses of the view, and this bond must be presented to the commissioners with the petition. (Section 1.) If the road shall be established by the commissioners, the county will pay all the expense, and this bond will then amount to nothing; but if the commissioners decide against the proposed road, then the bondsmen will have to pay the expenses of the proceedings, or be sued upon the bond. (Sections 1 and 6.) These expenses will amount to between ten and fifteen dollars a day during the time the viewers are actually engaged in making the view, and there may be some other small items of expense. (See section 11.) A printed bond, with proper blanks, may be usually had of the county clerk. A form for it is given in the third part of this book.

PRESENTING PETITION.

At the next meeting of the county commissioners, the petition and bond should be presented to the board. If the board find that the petition is signed by proper parties, and enough of them—twelve; and that the proposed road is so described that a practical surveyor could take the description and run it; and that the bond is good and in proper form, they will make an order appointing viewers, and directing the county clerk to give notice of the petition and view. (See WHAT THE COUNTY COMMISSIONERS ARE TO DO, and WHAT THE COUNTY CLERK IS TO DO.)

NOTICE TO LAND-OWNERS

At least six days before the time fixed for the viewers to meet, the petitioners, or the principal petitioner, must serve notice of the time and place of the viewers' meeting upon every owner of lands through which the road will run, who lives anywhere in the county, or has an agent living anywhere in the county; or if any of the lands are owned by a minor, an idiot, or an insane person, the notice must be served on that person's guardian, if there be a guardian living in the county. An "agent" means, in this statute, one who has authority to act *in such matters*—not merely an agent for *any* purpose. (26 Kas. Rep. 509.) If a land-owner does not live in the county,

and has no agent living in the county and authorized to attend to such matters, no notice is to be served on him; and if a minor, an idiot, or an insane person has no guardian living in the county, no notice can be legally served upon such person. The object of this notice is to enable the land-owner to apply to the viewers for the assessment of damages. (12 Kas. Rep. 531, 533.)

WHO IS A LAND-OWNER?

The term land-owner in these proceedings has a wide meaning, and does not include merely the actual owner of the *title* to land, nor one who owns *the land* itself; but includes every person having any rights connected with the land, and which may be affected by the location of the road through it. Thus, a tenant may have a nursery upon the very land the road will take; and he would be a "land-owner" upon whom notice must be served. If there are several owners, as heirs, notice should be given to each; notice should be given to *both* landlord and tenant (49 Iowa Rep. 569); the party giving a mortgage is still the owner—the mortgagee is not; if a lawsuit is going on between two claimants of the land, *both* should have notice; and if the land should be in possession of a receiver, he should have notice. In short, the *safe* course will be for the petitioners to give notice to every one appearing to have any kind of interest in the land, and leave the viewers and commissioners to settle the question of right. A form for this notice is given in the FORMS AND RECORD ENTRIES. The principal petitioner must also give the surveyor six days' notice.

RELOCATING ROAD.

If the true line of an established or public road has become doubtful or uncertain—the monuments or marked trees removed, for instance—it may be resurveyed under the direction of viewers. But in such case, it is the old road that is to *be found*—the very road laid out—and the purpose is not to construe nor to correct the old survey. (20 Ohio State Rep. 180.)

A petition signed by twelve householders is as necessary as in proceedings for laying out a new road, and unless such a petition is presented, the whole proceeding for relocation will be void; for without such a petition the county commissioners have no power whatever to act. (34 Kas. Rep. 595.) But if the object is nothing more than to merely relocate the old road—not to alter it in any way; if the old road, *just as it was*

laid out, is to be merely found and marked again, it will not be necessary to give notice to land-owners as if it were a proceeding to lay out a new road. (22 Ohio St. Rep. 180; 34 Kas. Rep. 595.) If anything more than this is intended, however, then notice of the view should be published and notices should be served on the land-owners precisely as in other proceedings. (34 Kas. Rep. 595–603.) If the reader will refer to WHAT THE ROAD OVERSEER IS TO DO, he will perceive how important relocation proceedings may become, and how often they may become necessary in a prairie country.

A proceeding to relocate will not be barred by a previous refusal of the county board to establish a new road over the same line, as if no road had ever been established there. (103 Indiana Rep. 48.)

ROAD ON COUNTY OR CITY LINE.

When a road is to be established on or along a county or city line, the proceedings are somewhat similar to those in other cases; the main difference consists in the joint action of the two boards and the two sets of viewers. (Sections 9, 10.)

APPEAL FROM COUNTY COMMISSIONERS.

From the decision of the supreme court in the case of *Wilson vs. The County Commissioners of Cowley County*, (18 Kas. Rep. 575), it seems that the petitioners may appeal from a refusal of the county board to establish a road, under the provisions of section 30 of chapter 25 of the General Statutes of 1868, which section is as follows:

"SEC. 30. Any person who shall be aggrieved by *any decision* of the board of commissioners, may appeal from the decision of such board to the district court of the same county, by causing a written notice of such appeal to be served on the clerk of such board, within thirty days after the making of such decision, and executing a bond to such county with sufficient security, to be approved by the clerk of said board, conditioned for the faithful prosecution of such appeal, and the payment of all costs that shall be adjudged against the appellant."

The decision above referred to does not say that the *petitioners* may appeal, but that seems to be a necessary consequence of the decision. However, in States where the question has been litigated, it has been decided that there can be no appeal from the decision of the commissioners as to the question of public utility; and our supreme court is very likely to decide in the same way. (34 Alabama Rep. 461–464; 6 Indiana Rep. 237.) Of course, if the county board refuses a petition arbitrarily, and without exercising fair, honest judgment,

the district court can furnish the petitioners a remedy. (Last clause of sec. 1, chap. 28, Gen. Stat.) But an appeal to a jury in the district court, upon this question of *discretion*, was certainly not contemplated by the legislature. Neither, it has been held, can this question be determined upon a petition in error. (3 Mass. Rep. 406; 9 Gray [Mass.] Rep. 57; 6 Cushing's [Mass.] Rep. 306; 10 Mo. Rep. 679.)

PETITION IN ERROR.

Another way to have the proceedings reviewed by the district court is by a "petition in error," which will be fully enough explained under the head—"How to Contest a Road;" for this proceeding may be used by either party.

Whenever either an appeal or a proceeding in error is to be taken, the petitioners should at once consult counsel; for non-professional men can very easily make fatal mistakes in such proceedings.

HOW THE NOTICE IS TO BE SERVED.

The statute does not provide *how* the notice shall be served, and hence, it must be handed to the party personally; it cannot be left at his usual place of residence. (6 Rhode Island Rep. 255, 259; 1 Curtis' U. S. Circuit Ct. Rep. 437: 18 Barbour's N. Y. Rep. 393; 25 Barbour's Rep. 636, 646; 2 Jones' [N. C.] Law Rep. 52; Wade on the Law of Notice, §§ 1334–1342.) Of course, if the land-owner appears before the viewers and claims his damages, it will be immaterial how the notice was served on him or whether it was served at all; for his appearance waives all objections of that kind; (25 Kas. Rep. 517, 518;) and if he afterwards files with the county board his claim for damages, that is a waiver of all defects in the notice. (33 Kas. Rep. 34; 13 Pacific Reporter, 32; 14 Pacific Reporter, 176.) But as it cannot be certainly known in advance that he will appear and waive objections, prudence requires that a strictly legal service shall always be made, or waived in writing. Since there can no longer be any doubt that a waiver of service is good in such cases, and as it tends to greatly facilitate the proceedings, a form of waiver has here been inserted among the forms in the THIRD PART of the present edition of this manual, to be used whenever the persons to be notified are amicably disposed, and thus make service of notice on them unnecessary.

PROOF OF SERVICE OF NOTICE.

The petitioner, or other person serving the notices to land-owners, must make out and preserve a true copy of each notice served, and must make an affidavit that he did serve it, when, and how, and file these copies and affidavits with the county clerk before the next meeting of the county board. (See FORMS.) Until these are filed, the commissioners cannot legally act upon the report of the viewers. (23 Kas. Rep. 732.) If written waivers of service have been taken from any persons, these should also be filed with the other proofs of service.

ROAD ON SECTION LINE.

If the road is to be run upon or along a section line, and the description shows that, and the petition states the fact, the county commissioners will dispense with the survey; and if all the land-owners sign a written agreement that the road (on or along a section line) may be located through their lands, the viewers may be also dispensed with, and the assessment of damages will then be made by the county commissioners. But in such a case the petitioners or signers must own *all* the land through which the road is to run; otherwise a view will be necessary to assess damages, even if but a single land-owner dissents. (8 Blackford's Ind. Rep. 289.)

The same proceedings are to be had upon a petition to alter and vacate a road as upon a petition to establish one; except that upon vacation of a road no damages are to be assessed. (10 Kas. Rep. 95, 99, 100.)

II—*WHAT THE COMMISSIONERS ARE TO DO.*

ORDER APPOINTING VIEWERS.

When a road petition is presented to them for their action, the county commissioners are to see that a satisfactory bond in proper form has been filed; and, if so, whether the petition is regular in form, and whether it properly and clearly describes the beginning, end and course of the proposed road; and they should require the evidence of some one, either by an affidavit or by being sworn orally before them, that the signatures to the petition are genuine; that the petitioners live in the vicinity of the proposed road, and that they are "householders." What a householder is has been explained already. (Page 9.) The necessity for this care is this: that unless *the record* shows distinctly that the board actually decided that the petitioners were householders, the whole proceedings will be void from beginning to end. (18 Kas. Rep. 129, 132.) If the petition and bond are in proper form and satisfactory, the commissioners are to so decide, and make an order appointing three householders of the county, who have no interest in the matter, to act as *viewers*, fixing a day for them to meet, and directing the county clerk to give notice of the petition and of the day the viewers are to meet; they are also to issue an order directing the county surveyor to meet with the viewers at the time fixed. The *county* surveyor must make the survey. (40 Ill. Rep. 522.) The time for the meeting of the viewers must be fixed at not more than twenty days after the notice expires, which is twenty days; and hence must be not more than forty days from the time the notice is first given. (Section 3.) How the record is to be made and entered will be explained when we come to "WHAT THE COUNTY CLERK IS TO DO."

FAILURE OF VIEWERS TO MEET.

If the commissioners are notified, and satisfied afterwards that the viewers failed to meet at the time fixed, and also on the next day, a new order must be made, directing a new notice and fixing another time for the meeting of the viewers. (Section 3.) Failure of the viewers and the surveyor to meet

at the appointed time, or on the next day, or on an adjourned day, invalidates whatever they may have done, or may do. No proceedings taken nor assessments made by them after such failure can be valid. Their power ceases at once. (103 Ind. Rep. 575.) When the viewers have been once appointed, the county board has exhausted its powers for the time being. It cannot take another step of any kind until either the viewers file a report, or it is brought to the notice of the board that they have failed to meet. In the latter case, all the board can do is to fix another time of meeting, or appoint new viewers, and order a new notice to be given. The board can do nothing at all but to keep on fixing new times of meeting, or appointing new viewers and ordering new notices, until at last it gets a report filed by viewers; then it can proceed with the case again, but not till then. (34 Kas. Rep. 556.) If a report is not made when it should be, the board should ascertain the reason; and if it finds nothing has been done, a new notice should be ordered, and new viewers appointed if that seems advisable. (34 Kas. Rep. 561.)

READING OF REPORT OF VIEWERS.

When the viewers have reported, the commissioners are to have the report read aloud before them, so that any one present and wishing to object to it may know it has been brought up for consideration. (Section 6.) If the report is favorable, the commissioners should see whether copies of the notices to land-owners, with the affidavits showing service, are on file; and if not, or if they are not regular in every way, the board should decline to proceed further until this requirement of the law has been complied with; for unless it is complied with, the commissioners have no power to proceed. (23 Kas. Rep. 731, 732.) A land-owner may waive the six days' notice, and if he actually presents his claim for damages to the viewers, then it is immaterial whether the six days' notice was actually served upon him or not. Of course, where that is so, the commissioners need not insist upon the filing of the notice and affidavit as to *him*. (25 Kas. Rep. 517, 518.)

CAUTION TO COMMISSIONERS AS TO NOTICE.

It is highly important, too, that the commissioners should see to it that the county clerk has properly given the required notice in the proper manner and for the proper length of time; for if he has not done so, the commissioners have no jurisdiction to proceed; (19 Illinois Appellate Rep. 259;) and

no matter how good the record may *say* the notice was, if none was in fact given, anybody interested may prove this afterwards, and the whole proceedings will fall. (32 Kas. Rep. 509 and 555–557.) The statute does not require any proof before the commissioners that this notice has been properly given, but provides only that the commissioners shall cause a record of the notice to be entered on the journal. (32 Kas. 555–558.) The commissioners are, however, sworn officers, and are not expected to make a record which for aught they know may be a sheer falsehood. They are to see to it that the record they make is true. (43 Ohio St. Rep. 335; 66 Iowa Rep. 414.) The notice to be given by the clerk is no mere idle form; its object is "that all persons interested may be heard before the viewers." (32 Kas. Rep. 557.)

ACTING UPON THE REPORT OF THE VIEWERS.

But if the notices have been properly given to the landowners, or waived by them; if the copies of notices served and the affidavits of the service have been properly made and filed; if the county clerk has properly given the notice required to be given; and if the proceedings of the viewers themselves seem to have been regular and valid, then the county commissioners are to consider and act upon the favorable report of the viewers (section 6); and in doing so are to act *as a court*, and exercise a sound, sensible discretion. For even though the proceedings be all regular, and the report of the viewers strongly favorable, yet the petitioners are not, for these reasons, absolutely entitled to their road as a matter of right; but the commissioners are to remember that the taxpayers all over the county are to help pay for the road, if granted, and they are to use their own good judgment as the only protection those taxpayers can have in the proceedings. (47 Iowa Rep. 32.) In short, the commissioners are not mere clerks to record the decision of the viewers; but the report of the viewers is made for the information and guidance of the commissioners, who are to deliberately and carefully balance the expense of opening the road, on the one hand, against the benefit and advantage of the road to *the public*, on the other. (27 Kas. Rep. 659–663.) The question for the board to decide is, not whether the road will be useful and advantageous *to the petitioners* merely, but whether it "will be of *public* utility" (section 6); for only *public* roads are to be made at the expense of the public. However, the law itself seems to imply that if a road is necessary or highly beneficial to twelve household-

ers, it is of public utility (section 1); for all the proceedings are based upon that theory. So all that can be said, at last, is, that the commissioners are to exercise sound, liberal and honest judgment as to the usefulness of the proposed road. If on appeal the damages allowed land-owners should be largely increased, it has been held that the county commissioners may rescind their order establishing the road, because public necessity will not justify so great an expense. (47 Iowa Rep. 32.) *Part* of the road cannot be laid out. All must be or none. (12 Connecticut Rep. 88–94.)

ESTABLISHING ROAD.

If they think the road will be of public utility, then—if the proceedings have been regular and legal—they are to make an order directing the county clerk to properly record the report, survey and plat, and that order establishes the road; (1 Greene's Iowa Rep. 439;) and the commissioners are then to issue an order requiring the trustees of the townships traversed by it to cause it to be opened to public travel. (Section 6.)

BOARD MAY ADJOURN PROCEEDINGS.

Of course the board is not compelled to act finally at the first meeting upon the report of the viewers, but may adjourn its consideration as it may any other proceeding requiring the exercise of enlightened judgment. (12 Kas. Rep. 17–25.)

REVISING ASSESSMENT OF DAMAGES.

The next duty of the commissioners is to review the allowances made by the viewers for damages to land-owners, and this subject will be considered when we come to "WHAT THE VIEWERS ARE TO DO." (Section 7.)

ACTION UPON UNFAVORABLE REPORT.

If the report of the viewers be against the proposed road, and the commissioners think the report a just one, and are of opinion that the road is not necessary, the proceedings are at an end, upon the making of the order by the commissioners so declaring; and thereupon the bondsmen must pay the expenses that have accrued, or be sued upon their bond, unless, of course, the payment is suspended by an appeal or other proceedings. An appeal, however, from the decision in such

a case—confirmation of an unfavorable report—can accomplish but little, if anything, for the petitioners except additional expense; and it would be better, speedier, and perhaps cheaper, to begin over again. (See PART III for the proper record entry upon an unfavorable report confirmed.)

But, suppose the report be unfavorable, and the commissioners are of the opinion that it is *not* a just one, or that the road *is* necessary, what then is to be done? The statute makes no provision for such a case as this. It does not authorize the commissioners to establish the road unless the report is favorable; nor does it authorize them to *stop* the proceedings unless there is an unfavorable report and they are of opinion that the report is just and the road unnecessary. (Section 6.) It seems to be the practice of some county boards to set aside the report in such a case, and order a new view; but the validity of such a practice admits of very serious doubt; for this is a statutory proceeding, and no more can be done than the statute authorizes. Besides, where the viewers fail to meet at the appointed time, the statute expressly provides for a new order of view; and by providing thus expressly for this particular case, may it not be supposed that a new order of view is authorized in no case whatever? It is the author's opinion that in such a case a new petition should be filed, praying for a road, precisely as if no petition had been already presented. And that the only effect of the opinion of the commissioners—that the unfavorable report is unjust, or that the road is necessary—is to relieve the petitioners from the payment of the costs and expenses. It has been decided in Iowa that an adverse report, legally made, ends the proceedings; that new viewers cannot be appointed; that the proceedings under that petition are closed. If anything further is done, it must be under a new petition. (52 Iowa Rep. 709.) A new petition can be filed and carried through, even though an adverse report on a former one by the same petitioners for the same road has been confirmed as just, and the road declared unnecessary; for the decision of the commissioners does not have the effect of barring further application, as if it were the judgment of a court. (52 Vermont Rep. 77; 103 Indiana Rep. 48.)

The same proceedings are to be had upon a petition to alter or to vacate a road as if it were a petition to lay out a new one, except that no damages are allowed land-owners, usually, upon the vacation of a highway. (10 Kas. Rep. 95, 99, 100.)

III—*WHAT THE COUNTY CLERK IS TO DO.*

THE ROAD RECORD.

By a statute already in force when the present road law was passed, the county clerk is required to keep a "road record." This provision is section 49 of chapter 25 of the General Statutes of 1868, and is as follows:

"Sec. 49. It shall be the duty of the county clerk to record in a proper book, to be called the 'road record,' a record of all proceedings in regard to laying out and establishing roads in the county, which said record shall include the report of the commissioners [viewers] and surveyor, locating such roads, and maps thereof, and such records, or duly certified copies thereof, are hereby declared *prima facie* evidence of the statements therein contained, in the courts of this State."

The new law does not change this provision, except that the record of the notice to be given by the county clerk is to be entered on the *journal*. (Section 3.) It seems, therefore, that this notice should be recorded in *both* the journal and the "road record;" for it is evidently intended that the "road record" shall contain a complete history of *all* the road proceedings.

RECORD ENTRIES.

The clerk has nothing to do with the approval of the bond to be given by the petitioners. That is to be approved by the commissioners when the petition is presented to them. Except to file and preserve papers, the clerk has nothing to do with the matter until the commissioners act upon the petition. It is the usual custom, however, for the clerk to put in proper and legal form the orders and proceedings of the board; and, hence, it is important that he should be prepared to make proper entries under the law. A complete set of entries to be made upon the record will be found in PART III of this manual; and it may be of interest to county clerks that a "Road Record" containing these entries, with blank spaces, so that little writing will be necessary to make up a complete record of each road, is prepared and sold by George W. Crane & Co., blank book manufacturers, Topeka, Kansas. The "Road Record" entries are taken from the forms provided by the author to accompany this manual, and a full set of notices, petitions, &c., corresponding with the author's forms and with the "Road Record," is also published by the same firm.

IV—*WHAT THE VIEWERS ARE TO DO.*

SHOULD LISTEN TO ALL PARTIES.

The viewers are not appointed simply to assess damages, but to listen fairly to all persons interested who come before them to oppose or advocate the road, and to come to an honest and reasonable conclusion just as a court would be expected to do. They are to the county commissioners what a referee is to a court. The county commissioners cannot, themselves, go out and examine every road proposed, nor listen to every man who has anything to say, either against it or in favor of it; for there would be no time left for the board to attend to other county affairs; hence, the law has provided for these viewers to go out instead of the commissioners, with nothing else to do, and with plenty of time to investigate thoroughly, so they can tell the commissioners what they have found out about the matter, and aid the board with their advisory opinion, based upon what they have seen and heard. In short, the viewers are assistants of the board—they are to be the eyes and ears of the commissioners. To illustrate: Suppose a dozen of us have some thoughts of purchasing a distant business—a mine or something of that sort—but we wish to have some *reliable* information about it before we invest, for, so far, we have had all our information from the parties desiring to sell. We meet together and agree to send three of our members to examine into the matter and report to us what they find out, and to give us their honest opinion whether we should buy or not. Now these three men would be our "viewers," and what we should expect of *them*, is precisely what the law authorizes the county commissioners to expect of *their* "viewers," so far as concerns the question whether the road should be laid out or not. The report should give the board full information as to all good reasons urged by people for or against the road, so that the commissioners may sit down and use *their own* judgment on all the circumstances. The viewers are to give *their* opinion, and the commissioners are to respect it, and to even rely upon it in case of serious doubt; but at the same time, the report should be so full and so fair that the commissioners may be able to

come to their own conclusion from what it states. No viewer should be so proud and vain of his opinion as *to care* for a moment whether the commissioners agree with him or not. He is simply to use his honest judgment, and then state all the facts in such a way that "the other side" may have every opportunity to convince the board that he is wrong. That is honest and fair, and he is simply doing to others as, under like circumstances, he would have others do to him.

In order to be thus fair, the viewers should not "hurry." They are there to *listen*, and they should do it patiently, attentively, and *courteously*. They should remember that farmers are not all college-bred, and that the majority of them are neither logical, nor practical men of affairs. They must learn, what all lawyers have to learn, that very few men can go straight on with their stories, and that it saves time in the end to let most of them go right on in their own way till they get through. It is not likely that any man will come before the viewers to say anything about the matter unless he has some reason that, *to him*, seems a good one, why the road should or should not be laid out; and it is but simple justice that the viewers shall endeavor to find out from his "talk" what that reason is, and then consider it, and give it whatever weight it deserves. If viewers were to always act thus fairly and courteously, every man would feel that he had had a fair hearing, and would have confidence that the viewers would do what was right, and, as a result, a contest would be a rare occurrence. Every man likes to be treated as if he were somebody. No man likes to be "snubbed." Let the viewers remember that they are to stand impartial between those who do and those who do not want the road; and that they are to consider "the utility, convenience, and inconvenience, and expense, which will result *to individuals*, as well as to the public," if the road should be established. (Sec. 5.)

ASSESSING DAMAGES.

But, while this is one of the duties of the viewers, it is not the only one. They are also to "assess and determine the amount of damages sustained by any person or persons through whose premises the said road is proposed to be established" (Sec. 5); and here again they are to act as impartial arbitrators between the taxpayers of the county and the land-owners damaged by the proposed road. They are to so judge that no land-owners shall lose anything, nor gain any profit at the expense of the taxpayers of the county. The viewers are to

make an actual estimate of each man's damages according to legal rules; they are not to guess at the amount, nor "lump" it; but they are to sit down and *figure it out* according to established rules. (19 Neb. Rep. 289.) If a land-owner appeals, as he may, to the district court, the jury will be required to estimate the damages *by items* in dollars and cents, and to judge of the benefits to be set off in the same cool, methodical way; and why, then, should not the viewers act in precisely the same way, and upon the very same principles as if they were sitting as a jury in the district court under the court's instructions? It must come to that at last, and the *capricious* estimates of the commissioners or viewers only serve to exasperate men to appeal, and burden the taxpayers with the costs such folly and hardheartedness incurs. Everything has been settled as to these matters, and we shall now see how the viewers are to go about the assessment of damages.

First, The viewers are to set off against the damages to any one any direct, peculiar benefit his land will derive from the road. What is to be considered such a benefit will be stated presently. If the benefits equal the amount of damages, then *no* damages are to be allowed. (85 Missouri Rep. 637.) If the benefits are less, then *the difference* only is to be allowed.

Second, The public does not become the owner *of the land* over which the road runs; it acquires only *a right to use it* for the purposes of travel. The *land* still belongs to the former owner, and if the road should ever be vacated, he has the land as fully as ever. The public takes nothing except what is actually necessary to make the road a good and sufficient thoroughfare for public travel; so that the trees, grass, hedges, fences, buildings, mines, quarries, springs, water-courses, and, in short, everything connected with the land over which the road is laid out, and not actually necessary to the road *as a road*, still belongs to the owner of the land, and the public gets no right to such things. He may remove all these things, or use them, or any of them, in any manner he chooses, provided that in so doing he does not interfere with the *use of the road* as a public highway. This is the only restriction upon his right to these things, or to their use, after the road is laid out. (10 Kas. Rep. 607; 21 Kas. Rep. 247.) So the owner is not necessarily entitled to the full value of the land over which the road runs; for there may be trees and the like upon it, which are still his, and which may be worth money. It would be better, however, and would come nearer exact justice, for the viewers to make a sort of debit and credit account of the

whole matter, and strike a balance; and so, in the first instance, the land taken should be measured, or estimated in acres, and the full actual value should be set down to the owner's credit as "apparent damages;" and whatever will still be left to him after the land is taken and paid for, and which has a money value, can be set down as "set-offs to apparent damages;" and the whole thing will be thus equalized.

Third, The elements which go to make up the owner's damages are as follows:

(*a*) The *cost of removing* a fence, so as to set it back off of the road. (17 Kas. Rep. 59.)

(*b*) If the road cuts the land in two, so as to require an *additional* fence, or, if for any reason, the road makes a *new* fence necessary, he is entitled to what it will cost to build it; and he ought not to be stinted, but should be allowed *all* the fence will actually cost. (20 Kas. Rep. 16; 10 Kas. Rep. 608.)

(*c*) The injury to the rest of the property by cutting off a part. (17 Kas. Rep. 60.) And the injury to the *whole tract* is to be considered, not merely to the immediate part of it. As, for instance, if a large tract is used for a stock ranche, and it is cut up and rendered less convenient, this injury is to be taken into consideration. (25 Kas. Rep. 421.) In short, any reasonably probable inconvenience, whether present or prospective, should be taken into consideration in the assessment of damages. (24 Kas. Rep. 745; 10 Kas. Rep. 439.)

Thus, in a case in New York, a proposed road ran over the grave of one who had been buried there more than fifty years before; and it was decided that the next of kin was entitled as damages to be indemnified for what removal and suitable reinterment of his ancestor's remains would cost. (4 Bradford's N. Y. Rep. 503.)

But there is a class of injuries which cannot be accurately estimated; the injury is clear enough, but it is impossible to tell *how much*, in dollars and cents, the party is damaged by it. Damages arising from injuries of this character are, in law, called "speculative" damages—that is, damages computed by mere *guess*—and are never allowed, because there is no way in which they can be figured out. (39 Barbour's N. Y. Rep. 266.) Thus, where a jury allowed damages to a party for the exposure of his orchard to thefts by tramps and others passing along a railroad running through his land, the supreme court decided that no such damages could be allowed, because, necessarily, they were sheer guess-work. (32 Kas. Rep. 609; 19 Neb. Rep. 289.)

The safest test in assessing damages for any particular al-

leged injury, is to see whether any amount can be actually arrived at by calculation. Thus, a land-owner says: "That road will run between my house and my barn, which will be a great injury to my place." "Very well," say the viewers, "how much *in money* will that injury amount to?" "Five hundred dollars, at least!" says the land-owner. The viewers take out their pencils, and say: "Now, give us the items that make up that amount, so we can figure it out. You know, we can't guess at it, nor 'lump' it, but we must be able to state just how we settled on that particular amount, so the county commissioners can see whether we have allowed you too much." He may tell what new fences will cost; but when he is asked to coolly calculate, on some sound basis, the present amount of injury arising from the mere fact that his house and barn are henceforth to be upon opposite sides of a public road, he will have a puzzle which it is not at all likely he can solve. All can see that it may be undesirable to have the road there, and all may even admit that its location is an actual injury; yet it is one of those injuries that cannot be accurately expressed in dollars and cents. The object of giving a land-owner damages is, to enable him to place himself in as good a pecuniary position as he would have been in if there had been no road laid out. With the money allowed him for a new fence, he can get a new fence and his injury is healed; but if you give a thousand dollars damages for having his house and barn on opposite sides of the road, he cannot take that thousand dollars and move either his farm or the road. He can, however, move his barn or his house, and here comes in an element of damages that can be understood. The injury of having a road between his house and his barn can be estimated only by estimating the expense of moving the house or barn to the other side of the road, and the additional expense of repairing the injury consequent upon the removal. So, in every case where damages are claimed for an injury, and the injury is a real one, the viewers should reflect by what means the injury can be repaired, and then what those means would probably cost; and this amount will be the damages from that particular injury.

(*d*) In addition to all these items, the viewers should ascertain the precise amount of the party's land embraced in the road, and allow him for this at its fair value per acre.

OPINIONS AS TO DAMAGES.

The *opinions* of witnesses as to *how much* a party is damaged are not good evidence; for, as before stated, the damage is not

a mere matter of opinion, but of *calculation;* and, of course, as the whole matter may come before a court at last, the viewers ought not to base their assessment upon anything but *legal* grounds. Why shall not the viewers seek to decide according to law *in the first instance*, and thus render an appeal and revision unnecessary in order to give a party justice? Opinions as to the amount of damages are not legal evidence, and ought not to be relied upon. (21 Kas. Rep. 253.)

BENEFITS AS OFFSETS TO DAMAGES.

When all the elements of damage have thus been ascertained, and the total amount footed up, the viewers should next determine what benefits, if any, the claimant's land will derive from the construction of the road, and deduct the amount of these from the total amount of damages. Here, too, the same cold rule must be applied, and mere fancy must not be indulged. Unless a benefit is worth so much in dollars and cents, so as to be capable of rational computation, it is a purely "speculative," fanciful benefit, and cannot be taken into account any more than can a "speculative" injury.

Before any benefit can be considered at all by the viewers, it must be clear that it is one which the particular claimant *alone* will enjoy. The advantage of having a public road in his vicinity is one common to the whole community; it is a *public* advantage; and the claimant pays in taxes for all *public* conveniences. (17 Kas. Rep. 59.) Neither is the increase in the market value of the land because of the road to be considered; for however much of a benefit this may be to *the owner*, it confers no benefit upon *the land* itself. In short, the only benefits which can be properly considered are such as add to the usefulness or convenience of *the land as land*—not to its market value, but to its value *for use* (21 Kas. Rep. 252; 27 Kas. Rep. 391–393), and which are, at the same time, peculiar to the particular tract of land—not common to all the lands in the neighborhood. (17 Kas. Rep. 58; 21 Kas. Rep. 247; 27 Kas. Rep. 391–393.)

Thus, if a stream on the land will be bridged by the road; if the land will be drained; or if any similar improvement of this kind will result from the laying out and opening of the road, these improvements may be properly considered. (21 Kas. Rep. 252.) In the language of the Supreme Court, the benefit to be considered, must be "something which affects the land itself, directly and proximately;" "something which increases the *actual* or *usable* value of the land, as well as the

market or salable value thereof, and not such as increase merely the market or salable value alone." It must be something which gives increased value to "the *use* of the land *as land*" to be used—not to be sold, merely. The benefits must be "such as are direct, certain and proximate, and not such as are indirect, contingent, or remote." (21 Kas. Rep. 247–252.)

LAND-OWNER MUST MAKE WRITTEN APPLICATION.

The viewers have no right nor power to assess damages in favor of anyone who does not make his application *in writing*, giving a description of his land, etc. Though the land-owner may come before the viewers, and personally demand the assessment of his damages, the demand cannot be heeded. He must make a regular, *written* application or the viewers are powerless to consider his claim. (24 Ohio St. Rep. 467–471.) But it is no more than common honesty that the viewers should tell him this in time, and not leave him to find out afterward that he has lost his claim through ignorance of the law. In short, viewers should, in all they do, remember that ignorance of the law is very usual, and that it becomes no gentleman nor honest man to make that ignorance in another the cause of suffering or loss. It will be seen, presently, that nothing whatever will excuse the land-owner's failure to make his written application to the viewers. If he does not present it, he is forever barred from claiming compensation.

INTEREST OF APPLICANT FOR DAMAGES.

Supposing a proper application to have been made, the next question will be, What interest has the applicant in the land? For although he may be in possession, yet if he has no right to the land, as, if it should be Government land upon which he is a mere "squatter," he cannot be allowed any damages for injury to it. (18 Kas. Rep. 124–128.) Each claimant is entitled to damages only to the extent of his own interest in the land. If there are several owners, each is entitled to only the damage to his share. (18 Kas. Rep. 128.) If one man owns the land and another the crops, the land-owner is not entitled to any compensation for damage to the crops, nor is the owner of the crops entitled to any assessment of damages as to the land. (18 Kas. Rep. 128.) And in such cases, *each* party interested must make his own written application; if one applies and the other does not, the viewers can assess damages in favor of only the one who applies, and only as to his own interest. One in possession of land under a bond or a deed,

however, is considered as the *owner* of the land in these proceedings, and he alone is entitled to the damages. (15 Kas. Rep. 427; 17 Kas. Rep. 240–246.)

No damages can ordinarily be allowed any one upon the vacation of a road. (19 Kas. Rep. 95, 99, 100.)

A SUGGESTION.

When it is remembered that almost every question that can arise in these proceedings, however puzzling it may seem, has been decided by the Supreme Court of some State, and that our own Supreme Court is constantly deciding new questions under our own road law; and that matters not yet thought of, and not mentioned at all in this nor in any other book, may at any time be thus brought up and decided; and when it is. further remembered that although road viewers can rarely ever be thoroughly-posted lawyers, yet their proceedings may at any time be subjected to the severest judicial scrutiny, and if found void or defective, or contrary to some decision of the Supreme Court, may result in the most serious injury to the people interested, as well as to the county, it is obvious that upon the question of damages, the viewers should have the assistance of zealous counsel who will *reason out* these questions, and hunt up and show to the viewers every decision that has been made anywhere upon the matters to be decided. The viewers have no authority to employ advisory counsel, and even if they had, such counsel would be of little use; for the matter would be of very little interest to him. But if each claimant of damages were to employ counsel to advocate his claim before the viewers, such counsel would be zealous in looking up and thoroughly studying *that particular claim*, and would, if honest in his profession, present to the viewers every reason and every decision in favor of that claim; and, thus, every claim for damages would be so fully presented by personal zeal and industry that the viewers would be as fully informed, and as capable of deciding legally and justly, as any court; for this is the very way in which judges are instructed as to each case that comes before them. It is clear, however, that if claimants were to employ counsel to leave their offices shut up, and go out miles into the country to present their cases while the viewers were there on the ground, the expense would be burdensome, and, besides, the distance from law books would make the lawyer's mere "talk" of little real assistance to the viewers. Is not this, then, a good suggestion? Let the viewers, as each application for damages is

handed them, or, by a general notice to land-owners, inform the claimants that on a certain day, at a designated place, the viewers will sit *at the county seat* for the purpose of hearing arguments by counsel in favor of all claimants who choose to have their claims so presented; and suggest to the claimants that several of them may club together and employ counsel at little expense to each claimant; and that the viewers are perfectly willing and desirous to hear argument; then, at the appointed time and place—perhaps at the court house, or in some law office—the viewers could sit precisely as a court; if, during counsel's argument, any viewer wished information as to any particular question that occurred to him, he could request counsel to discuss that question in his argument; and thus the viewers could rest secure that they had gathered all the information possible upon the question of damages; and after the discussion, could, upon private consultation, decide upon the amount of damages to be awarded to each claimant. Such a proceeding would be perfectly valid; for the viewers are not required to decide upon their report at the very time of the view and survey; but the view is for the same purpose as a view of premises by a jury during a trial in court; it is to enable the viewers to judge more intelligently of the matters to be decided. The report may be made at any time "on or before the first day" of the next session of the county commissioners. (Section 6.) And it has been expressly decided that the viewers may adjourn to meet at another time, and that even after they have already agreed upon their report, they may change it, and even report the other way. Until their report is filed with the county clerk, they have complete control over it. (17 Ohio Rep. 101–104.) Besides, a mere view will not teach them who owns this or that tract of land, nor what it will cost to move a fence or to build one; nor even the value of land in that vicinity. The law requires these things to be considered by the viewers, and there must be some lawful means for securing reliable information; and as the report of the viewers will, on appeal, be examined in the light of the strict rules of law, it seems that the viewers should, in the first instance, be entitled to have the means of making a strictly legal assessment, with a full knowledge of all the circumstances. But, let the reader remember that this is but the suggestion of the author of this book; it has not been decided to be valid; and although the author has little doubt about the propriety of his suggestion, his readers must use their own judgment as to accepting it.

DECIDING UPON REPORT.

The viewers having estimated all the damages that will have to be paid by the county if the road should be established, and having carefully considered the importance of the road, must decide whether, in view of the expense, the road is needed badly enough by the public to justify its establishment. But the *public* importance of a road does not depend upon whether the whole county will actually travel it. It may be of public utility, although it serves, principally, only to give *one man* a chance to get to town over a public highway. "The State is not bound to allow the citizens to be walled in, insulated, imprisoned; but may provide them a way of deliverance" (25 Iowa Rep. 546–547); and "the fact that a road has no outlet or egress at one end, and that it primarily and principally benefits a single individual, does not destroy its character as a public highway, nor prevent the public from taking private property for it." (12 Kas. Rep. 17–25.) What is a road of "public utility?" Simply a road required for public *convenience;* it need not be absolutely necessary to the public; but it is of "public utility" if it will be generally useful and convenient to have such a road. (86 Ind. Rep. 68.) By usefulness to the public we are not to understand that everybody needs the particular highway as a means of universal travel; but whether it will be useful to the community to have a road over which a few people, or even one person, can reach a school, a voting place, the county seat, or the like. The public wants men to serve on juries, to testify in courts as witnesses, to attend musters of militia, to vote, to get and send letters, public notices and newspapers, and to send their children to school and their products and wares to a ready market; and, hence, a road enabling citizens to do these things, although it serves this purpose as to but a very few, or to only one person, is so far of utility to the public, which needs to have its citizens take part in public affairs, grow intelligent and engage in traffic. The question is not how many people will likely travel the road, but whether it will be beneficial to the public to have the people who *will* travel it be able to get away from home for public or commercial purposes. However, even if the road be of such public utility as to justify the necessary expense to the county if established, it still does not follow that the viewers should make a favorable report; for they are to consider the inconvenience it may cause to land-owners, and for which they cannot be entirely compensated by the damages to be paid.

The road *as prayed for* may run through a beautiful grove, or park or pleasure ground planted many years ago, and dear to a family from its past associations; it may traverse the graves of the dead; or, in many a way, it may break in harshly upon memories, pleasures or laudable tastes of citizens in such a manner that sordid dollars and cents can afford no compensation for the wounded hearts or thwarted tastes; and the statute requires the viewers to consider all these things. The question for the viewers to decide is, not whether *a* road is necessary, but whether the particular road "as prayed for" is so far necessary as to justify, not only the expense to the county, but the inconvenience to private citizens; for if a road be necessary, yet if one could be laid out just as well without so much expense, or without inconvenience to private citizens, while the particular road proposed will be much more expensive, or will put some land-owner to great inconvenience or annoyance, the viewers should unquestionably decide against the proposed road. In short, the viewers are to consider three things: the benefit the road will be to the public, the expense it will be to the county, and the inconvenience or annoyance it will cause to particular persons; but public necessity is supreme, and if the public necessity cannot be supplied in any other way than by the very road proposed, then the expense to the county and the inconvenience to private persons cannot stand in the way of establishing that road.

PREPARATION, FORM AND FILING OF REPORTS.

When the viewers have heard all parties interested who have appeared before them, assessed all the damages properly applied for, and fully made up their minds whether they will report for, or against, the proposed road, their next and final duty is to draw up their report, sign it, and give it to one of their number to be delivered to the county clerk. The report may be signed by two of the viewers, if the third does not agree to it, or does not choose to sign it. (8 Kas. Rep. 258.) Usually, and perhaps properly, the report recites that the viewers have viewed the road, caused a survey to be made, etc.; but the statute requires, in terms, no more of the viewers than "a report in writing, stating *their opinion* in favor or against the establishment * * * of said road, or any part thereof," and that they shall "set forth the reason of the same." (Sec. 6.) The Supreme Court has decided that "no elaborate presentation of reasons *pro* and *con* is required," and that a report which simply says that the proposed road "is practicable," and

that the viewers "recommend its adoption," is sufficient (8 Kas. Rep. 259); but it was not altogether necessary for the court to decide this in the particular case, and it is not at all unlikely that when it does become necessary, the court will say such a decision was wrong; for it violates both the letter and spirit of the law. The law plainly requires, in so many words, that the viewers shall "set forth *the reasons* of" their opinion; and to say that the road is "practicable" is surely not setting forth much of a reason why private property should be confiscated for it, or the taxpayers of the county burdened with the expense of establishing it! It is "practicable" to lay out two roads side by side, yet there may be some doubt as to the public necessity for doing so. Neither is it *a reason* for the viewers to say they "recommend" the road; for that is no more than a favorable *opinion*—it is no *reason* for an opinion. But this decision destroys the *object* of the report—it violates the *spirit*, as well as the *letter* of the law; for the Legislature evidently intended that these "reasons" should be "set forth" for some purpose, and what could have been that purpose, but that the county commissioners might be able to see whether the opinion of the viewers was a reasonable one? The object clearly was, that the report should, as nearly as possible, enable the commissioners to put themselves in the place of the viewers, and thus judge *for themselves* whether, under all the circumstances, the road ought to be established or not. Now, how can the commissioners form any judgment of their own from the report, when that report gives them no information, but only tells them that the road is "practicable," and that the viewers "recommend its adoption?" The law does not authorize the commissioners to call in witnesses, but the board is to arrive at its conclusion from the report; and that is why the report is to be made. The decision of the Supreme Court makes it necessary that the commissioners should either blindly accept the opinion of the viewers without question, or reject it from mere whim and caprice. The author has no doubt that the Supreme Court will overrule that decision, and not thus destroy a plain statute. At any rate, it will be better to err on the safe side, and the viewers should give the reasons for their opinion fully enough to enable the commissioners to decide whether those reasons are sufficient. It has been decided in Ohio, too, under a similar law, that unless the report states that the road will be of public utility, the commissioners have no power to establish it. (35 Ohio State Rep. 445.)

The viewers must fix the width of the road. If they fail to do so, all their proceedings must go for nothing. "The width of all county roads shall be determined by the viewers at the time of establishing the same, and shall not be more than eighty nor less than forty feet;" but to avoid injury to a growing hedge or other permanent improvement, the width may be as low as thirty feet. (Section 29.) If the width is not fixed by the viewers, the whole proceedings are void. (5 Blackford's Ind. Rep. 462; 8 Blackford's Rep. 208; 9 Indiana Rep. 103; 112 Pennsylvania St. Rep. 212.)

V—*WHAT THE LAND-OWNER IS TO DO.*

APPLICATION TO VIEWERS.

If a land-owner lives in the county, or has an agent living in it, and no notice has been served upon him or his agent by the petitioners, he should, if he desires to contest the road, pay no attention whatever to the proceedings; for if he ignores it, the road cannot as to him become legally established. (23 Kas. Rep. 731, 732.) If he has no desire to contest the road, he can present his claim for damages to the viewers, the same as if he had received notice; for the notice is for his benefit, and he may waive it if he so chooses. (13 Kas. Rep. 265; 25 Kas. Rep. 517.) If notice has been properly served upon him, then he has no choice, but *must* present his claim to the viewers or be forever barred from claiming any compensation, if the road should be established through his land. How strict the requirement is, may be seen from the following case, decided by our Supreme Court: "On the morning of the day appointed, the plaintiff, who lived about five miles from where the viewers were to meet, prepared his claim for damages, had his horse saddled and at the door to carry him to the place of meeting of the viewers in time to have met the viewers and present his said claim, and intended so to do; that his mother, a resident of his family, was taken suddenly and dangerously ill with a congestive chill, which in a few days terminated in death; that plaintiff was called upon and stopped from meeting with said viewers to be with his mother in her illness, was with her, at her bedside attending upon her, and that had it not been for his mother's illness, as stated, he would have presented his claim for damages to the said viewers, and said viewers would have allowed plaintiff his damages and reported favorably on laying out said road; that plaintiff appeared before the defendants (county commissioners), before they had acted on the report of the said viewers, and presented his claim for damages in writing, and made known to them the above facts." The county admitted this all to be exactly true; yet the Supreme Court decided that no damages could be allowed, because the plaintiff had not presented his claim to the viewers; that

nothing will be an excuse under the statute. "No exception is named in the statute; no authority is given to the courts to declare one." (13 Kas. Rep. 146; 25 Illinois Rep. 518.)

The application to the viewers for asssessment of damages must be written or printed, and must describe the premises. Unless thus presented, no attention can be paid to it. (24 Ohio State Rep. 467–471.)

The land-owner is entitled to no damages for injuries likely to result from acts he has done since notified of the proceedings; as, for resetting a fence erected on the land after view and assessment. In whatever he does while the proceedings are pending, he takes the risk that the road will be finally established. (22 Iowa Rep. 557.)

APPLICATION TO COUNTY BOARD FOR REVISION.

When the report of the viewers has been made, the land-owner has an opportunity of seeking a revision of the amount allowed him; and if he considers himself aggrieved by the action of the commissioners upon his claim, he may appeal to the district court, and obtain a trial before a jury. He may, however, lose his right of appeal by negligence; for the county commissioners are not bound to notify him when they act upon the report finally, and, unless he watches closely, he may not discover that it has been acted upon until the time for taking an appeal has gone by. (12 Kas. Rep. 25.) If the viewers disallow the claim, no matter how unjust their decision may be, the land-owner cannot enjoin the road on this ground, but must appeal, or resort to a petition in error. (31 Ohio State Rep. 621.)

RIGHTS OF, WHEN NOT NOTIFIED.

If a land-owner, resident in the county, or having a resident agent, receives no notice from the petitioners and makes no application to the viewers, he may apply to the county board at any time within twelve months after the location of the road, and have his damages assessed (sec. 5); and of course he may appeal from the decision of the board as in other cases. The provisions for barring the claims of land-owners have no application to persons who neither live in the county themselves nor have an agent living in the county. (25 Kas. Rep. 616, 617.)

It has been decided in Ohio, that a railroad company is not

entitled to any damages when a new road is laid out across its track, so that cattle-guards, safe-crossings, etc., have to be constructed; for the statute requiring these things at road crossings, applies to roads afterwards laid out, the same as to those in existence when the railroad was constructed. (38 Ohio State Rep. 150–152.)

VI—*WHAT THE ROAD OVERSEER IS TO DO.*

It would be needless to tell the readers of this book who a road overseer is, or how he is elected, for all know without telling, and, besides, the statute is clear enough upon those matters without further explanation. So this chapter will deal only with the *duties* of a road overseer. These are: *First*, To open established roads and keep them open; *second*, to keep the roads in his district in repair and in safe condition for travel; *third*, to collect road taxes; *fourth*, to keep proper accounts and make proper reports of his official doings.

NOTICE TO LAND-OWNERS TO OPEN ROAD.

As we have seen, when the county commissioners establish a public road, they are to issue an order to the trustee of each township through which any part of the road runs, requiring him to cause the road to be opened for travel so far as it lies within his township. (Sec. 6.)

When he receives this order, he must, in proper time, direct each road overseer in the township, through whose district any of the new road runs, to proceed to open the road, or to cause it to be opened; and then the overseer must begin his task, which is one not perfectly free from trouble and annoyance, nor even from danger. His first duty is to notify the owners of the lands through which the road runs, if the owners are residents of the county, or the agents of non-resident owners, who have agents resident in the county, to open the road themselves through their respective lands. It will be a trespass if he enters upon the land to remove a fence or the like, unless the land-owner has had the notice allowed him by law. (25 Illinois Rep. 518.) If the owner of any of the traversed lands should be a minor, an idiot, or an insane person, then the notice must be given to that person's guardian, if there be a guardian resident in the county. This notice is required, however, only in case the land is enclosed or cultivated. If it is vacant, unoccupied and unenclosed, so that there is no crop, no fence, nor anything of the sort to be removed in order to open the road, then no notice to the owner of such land is necessary; for the object of the notice is only

to enable the owner to get his crops off, or to move his fences himself, so as to cause the least injury and inconvenience to him. For this reason, if land is in possession of a tenant, who has a crop on it that he owns, notice ought to be given to the tenant as if he were a land-owner too; for he is the person to be benefited by it; but notice must, also, be given to the owner of the land, if he lives in the county, or has an agent living in the county.

If this notice is served *after* the first of October and *before* the first of March, it should require the parties notified to open the road through their lands *within ninety days* after being served with the notice; but if it is served *after* the first of March and *before* the first of October, then it must require the parties to open the road on or before the first day of the next January. (Section 12.) But suppose the notice should be given precisely *on* the first day of March or of October, neither before nor after, shall the notice then require the road to be opened in ninety days, or on the first day of the next January? Much may depend upon which is right, if notice should be so given; and as a mistake might render the acts of the overseer illegal; and as this question has not yet been decided, and *may* be decided either way upon very plausible grounds; and as there cannot usually be any particular necessity for giving notice on those very days; it would be prudent for the road overseer not to serve any notices on either the first day of March or the first day of October, and thus avoid all question as to legality on this ground.

As this notice is to be "served" upon the parties, of course it must be written or printed; it cannot be "served" orally.

If the surveyor has done his duty, and the road has been "conspicuously marked throughout" (section 6), the land-owner need have little difficulty in ascertaining its exact location through his lands; as the very object of the surveyor's marks is to enable the land-owner or the road overseer to know the route of the road; still, the road overseer's notice should be reasonably specific, and should give such information as to enable the land-owner to readily understand what is expected of him. For instance, it is not at all impossible that two roads may, at different times, have been established through the same person's lands, and neither of them may have been yet opened; and, in such a case, how is he to know which road he is to open, unless the notice tells him? In this, as in all other cases where error is probable, it is better to err on the safer side, and make the notice full enough to put the matter beyond doubt. Where

printed notices are used, this will not involve a great deal of labor, but a serious error might cost the overseer much more than it would to even sit down and carefully and painfully write out all the notices in full. But the printed notices prepared in connection with this book are safe and full, and it will be found much more convenient to use them than to write out the notices and incur the risk of an occasional "slip of the pen." It has been held that if the proceedings for laying out the road are invalid, the overseer will be liable to the land-owner as a trespasser for opening it; and that even a writ of mandamus compelling him to open the road will not excuse him if it has not been legally laid out over any land-owner's premises. (31 Ill. Rep. 97.) But neither the land-owner nor the overseer is to go by any description of any kind in actually opening the road—these may serve to show what road is to be opened, and cases may happen in which they would be very important for that purpose; but the road is to be opened according to the "monuments" or marks actually set up on the land by the surveyor under the direction of the viewers.

In opening a road, the overseer must follow strictly the marks of the surveyor, and cannot exercise any discretion in the matter. "After all the care taken to have a road located by commissioners, it never was designed that an overseer should change its location to suit his notions of public utility." (18 Mo. Rep. 361.) A mistake as to the correct line of the road may make him liable in damages to the injured land-owner. (29 Ill. Rep. 135.) Unless the recorded survey shows the course to be otherwise, every line between two marks set up by the surveyor must be straight and direct. (18 Mo. Rep. 360, 361.) And if the survey as recorded does not agree with the marks, stakes or stones set up, it has been held that the marks, stakes or stones must be heeded rather than the record. (8 N. H. Rep. 474–476.) Our statute makes no provision for giving the road overseer a copy of the survey for his guidance. The law gives him no means of information but the marks to be set up by the surveyor at the time of the view. But the exact location, course and distance of the road are made matters of record of which everybody must take notice, and the overseer cannot be exempt from this general requirement. It seems to the author, however, that a copy of the survey should accompany the order to the township trustee requiring him to cause the road to be opened, and should be a part of that order to this extent: that inasmuch as the order must necessarily describe the road to be opened, else it could

not be intelligently obeyed, the description should be the description in the survey and report—not merely the description given in the petition. This would enable the trustee to give his overseers ample instructions as to the route of the road; and the author believes the statute contemplates such a description in the order to the trustee.

The object of the surveyor's report, and of the map, is merely to preserve the best evidence that can be preserved of where the road runs, in order that some means of knowledge may be left should the stakes and stones set under the direction of the viewers be removed or destroyed, purposely or by accident; for, especially if the road had not yet been used long enough to mark clearly its course, there would be no reliable means at all of finding it in such a case if no record of the survey had been kept. But it must be remembered always that the surveyor's report and the recorded map are not *the road;* that it is marked on the ground itself by the stakes and stones set up. The surveyor "acts merely as the servant of the road viewers, and the road viewers locate the road where it is *actually* located, and not where the field-notes may happen *to show* that it was surveyed or located." (34 Kas. Rep. 600.) The viewers are to go over the ground and decide just where the road shall run; they are to point out the course to the surveyor, and have him set up "monuments"—stakes or other durable marks—while they look on and see that the monuments are put where they belong. The surveyor then must make a description of the courses and distances thus marked out on the ground; and to do this properly he makes a survey and plat, so that his report is the same in effect as if he were to write a letter describing the road as marked out by the viewers. Damages are allowed to land-owners with reference to the line of the road as thus actually staked out there on the ground, and all that is done is done with reference to the road so actually staked out, while the surveyor's report merely describes *what has been done*, precisely as a county map shows the boundaries of counties as they are established by law. It is not the location of the road; and no more settles where the road shall run than a newspaper description settles the height of a mountain or the width of a lake—the description cannot alter the actual fact. The road is where the viewers marked it on the ground; and if the surveyor's report does not agree with that, so much the worse for the report—the road is precisely where the viewers decided it should be. (34 Kas. 595, 598, 601.) So, neither the overseer nor the land-

owner has any guide to go by in opening the road but the marks which the viewers have caused to be set up; *they* have nothing to do with the report nor with the map; if "the place of beginning or true course" of the road has become "uncertain by reason of the removal of any monument or marked tree by which the road was originally designated, or from any other cause," it must be *relocated* by proper proceedings, and *new* marks must be set up before the overseer or the land-owner can be called upon to open the road. Of course, when the re-viewers come to relocate the road, the surveyor's report may be of great service *to them* in enabling them to find where the lost marks originally were; but the overseer and the land-owner must go by *the monuments set up on the land;* and if these are gone, must wait till they are restored by a re-view; otherwise the road actually opened might not be the road the original viewers laid out, and might run so as to do a land-owner trifling injury for which he had been paid large damages, while the public would be greatly inconvenienced; or, on the other hand, serious damage might be caused to the land-owner, largely in excess of what the viewers had allowed him with reference to the road *as they meant it to be.*

But when the road has been opened, the overseer's work has but commenced; for he must keep it open and safe to travel. To this end he must see that it is kept free from all unlawful obstructions. What obstructions are unlawful is shown in general terms by the statute. (Sections 23, 24.) But some particular matters may be mentioned with advantage here. A "willful obstruction" does not necessarily mean an obstacle to travel put in the road for the express purpose of obstructing, although, of course, that would be a willful obstruction; but a party who does any act which has the effect of obstructing the road, and after knowing that it has that effect still persists in what he is doing, and does nothing to avoid such an effect, is guilty of a willful obstruction. Thus, where a man built a dam on his own land, and it had the effect of constantly backing water over a road so as to keep it submerged and unfit for travel, and having been notified by the overseer still did nothing to remove the obstruction, the Supreme Court decided that he was guilty of a "willful obstruction." (32 Kan. Rep. 450–455; see, also, 8 Kas. Rep. 255–259.) So, an owner of adjacent lands consented that some parties might fell a tree belonging to him, but on condition that it should not fall into the highway, or that they would remove it if it did; but the tree did fall into the road, and remained there, and he knew it.

It was held that he was guilty of obstructing the road. (37 Ohio State Rep. 1–10.) These examples show, in general, what will constitute a willful obstruction: (1) Something done by one, or under his direction or permission; (2) Knowledge on his part that the effect of what is thus done is to obstruct the road; (3) Not seeking in good faith to do anything to remove or prevent the obstruction. But to be guilty, he must have done some act. Mere omission to remove an obstruction put in the road by some other person, without the coöperation or consent of the party accused, will not constitute the offense of willful obstruction. (59 Illinois Rep. 306; 12 Bush's Ky. Rep. 264; 52 Iowa Rep. 228.) It is no offense to obstruct an abandoned road. (36 Illinois Rep. 92.)

Our Supreme Court has decided that when a railroad has interfered with a highway, the company is bound only to restore the road to its former condition, and is not thereafter bound to keep it in good condition; that the company's duty ceases with the act of restoration. (27 Kas. Rep. 685–692.) We have already seen that the land-owner has the right to still use the premises over which the road runs in any manner which does not interfere with public travel; that he may dig coal, mine minerals, quarry rock, or plant out trees. Hence, he cannot be charged with obstructing the road, unless what he does is incompatible with the rights of the public; and he has a right to have a jury decide this question. (22 Kas. Rep. 285–294, 295.)

A road overseer is a ministerial officer, and his duties and powers are confined to his own district. When he leaves his district boundaries, he leaves his office behind him, and outside his district has no power as a road overseer. (13 Ohio State Rep. 406.)

It has been decided in Ohio that to resist a road overseer in the lawful discharge of his duty, is "resisting an officer," within the statute making such resistance a criminal offense. (26 Ohio State Rep. 196.)

It must not be forgotten that there was law in force long before the road statutes were enacted—the general rules of justice known as "the common law"—and, hence, the remedies pointed out by the statute are not always the only remedies the public can have for the protection of the public roads. Thus, if a railroad company, in constructing its track, should tear up a public highway, and persistently refuse to put it in proper condition again, it has been held that the attorney general (or the county attorney here) might bring a suit and obtain

an injunction forbidding the company to use the crossing until it should do its duty by restoring the road to its proper condition. (36 Ohio State Rep. 434.)

The duties of the overseer as to working the roads, giving receipts, keeping and rendering accounts, etc., are all plainly set forth in the statute, and need no explanation here. Forms for receipts, or certificates for materials, and of overseer's accounts, reports, etc., will be found in PART III of this manual.

VII—*HOW TO CONTEST A ROAD.*

Any one through whose lands a proposed road will run, may contest its establishment, unless he does some act which will preclude him from that right. But nothing he can do will, perhaps, waive his right to object, unless the county commissioners had jurisdiction to carry on the proceedings; it is only where the county board had, by following the statute strictly, become entitled to act, that any such question as that of waiver of the right to contest can arise; and the general rule upon which the courts act in such matters is, to be strict in requiring everything upon which jurisdiction depends; but if jurisdiction has been clearly acquired, then to be liberal in regard to irregularities in the proceedings themselves. (34 Kas. Rep. 562.) If the board has acquired jurisdiction, mere irregularities or mistakes may be waived by the land-owner's silence or conduct. The waiver is not a personal matter, but relates only to the land; so that if a land-owner should waive notice of the view, this would preclude him from objecting because of the want of notice so far as concerned the land he then owned; but if he should afterwards purchase other lands over which the road runs, he could object that the owner of *that* land was not notified, and make a contest as fully as the original owner could have made it. (18 Kas. Rep. 386–396.) Before going further, however, let it be understood that we are now speaking of a contest *against the road* as illegally established—not a contest by a land-owner over the damages; the latter subject is fully discussed under the head, "WHAT THE LAND-OWNER IS TO DO." With this understood, let us here see—first, who can contest the road, and what waives the right; second, upon what grounds it may be contested; and third, by what proceeding the contest may be made.

WHO CAN CONTEST.

A taxpayer cannot bring any proceeding *as a taxpayer* to contest the location of a road. So far as the taxpayer's rights are concerned, they are represented by the State alone—they are *public* rights—and they can be asserted only by the county

attorney or by the attorney general suing in the name of the State. The taxpayers have no other means of redress, except that of course they may, if they can, persuade the county board not to lay out the road. The only persons who can personally contest the road are those whose *private* rights are affected by it; and land-owners, whose lands are affected by the proposed road, are, perhaps, the only persons who answer this description.

Of course, that the land-owner claims damages before the viewers cannot be a waiver of his right to contest; for that would be requiring him to take the chance of losing all compensation if his contest should not succeed. Besides, the law gives him no opportunity to contest on legal grounds until the viewers have made their report. But, if he presents to the viewers his written application for damages, he does waive his right to object that notice of the view was not served upon him. (25 Kas. Rep. 517, 518; 33 Kas. Rep. 34; 13 Pacific Reporter, 2; 14 Pacific Reporter, 176.) An appeal from the assessment of damages by the county board waives all objections to the validity of the proceedings, and nothing remains open to contest but the amount of damages. An appeal may, however, be taken as to the whole proceedings, and this will save all questions for review in the district court.

GROUNDS OF CONTEST.

The grounds of contest must be based upon either the want of power in the county commissioners to act in the case at all; or the irregularity of their proceedings; or the illegality or injustice of their decision. The power of the commissioners to act at all is called *jurisdiction;* the mode in which they are to exercise that power is the *procedure;* their final determination is their *decision;* and the whole subject of the grounds of contest, will be gone over under the three heads—*jurisdiction*, *procedure* and *decision.*

Jurisdiction.—The law defining the powers of county commissioners authorizes them "at any meeting," among other things, "to lay out, alter or discontinue any road running through one or more townships." (Sub-division 8 of section 16, chapter 25, General Statutes; see Compiled Laws of 1881, p. 275.) Nevertheless they can exercise this power in any particular instance only when the matter is properly brought before them as provided by statute; they cannot act upon their own motion, but must wait, powerless, until the proper persons petition them in the manner prescribed by law. (18 Kas. Rep. 386–

396.) Until a petition is presented them, no jurisdiction exists. Again, this petition can be presented only by *householders* of the county; a petition signed by any other class of persons is the same as no petition at all, for no others have a right to present a petition. And *twelve* householders of the county must sign it; eleven householders of the county and one non-resident, or one not a householder, will not do, but the petition will still be the same as if *no* householder had signed it. Hence, it is good ground of objection to the jurisdition of the commissioners that any one of the necessary twelve signers was not a *householder*, or not a resident *of the county*. (12 Ohio State Rep. 635, 636.)

A non-resident land-owner can no more be regarded as a legal petitioner than if he owned no land; the petitioners must be householders *of the county*. (35 Ohio State Rep. 454.) If twelve such legal petitioners have signed the petition, however, and the proper notice has been published by the clerk, the death of one of the petitioners afterwards will not affect the power of the commissioners to act, for their jurisdiction will have become complete. (35 Ohio State Rep. 444.) It is not necessary, either, that the twelve petitioners shall all sign the same petition; for duplicates may be circulated for convenience, and they will all be treated as one petition; so that if the duplicates contain the signatures of twelve householders when taken together, that will be sufficient. (31 Ohio State Rep. 386; 32 Ohio State Rep. 544; 36 Ohio State Rep. 288.)

But even though properly signed, the petition may be fatally defective for want of an intelligent description of the proposed road; for unless the description would enable a practical surveyor to locate it, the petition confers no jurisdiction upon the commissioners. (59 Ind. Rep. 54, 55; 73 Ind. Rep. 454–456.) Supposing, however, that the petition is sufficient, there is yet another indispensable step to be taken—the notice to be given by the county clerk. If this notice has not been actually given, precisely as required by law, the commissioners have no power whatever to proceed. (32 Kas. Rep. 507, 557.)

But the petition and the notice by the county clerk give jurisdiction only to consider the propriety of laying out the road; still another step is required before it can be laid out over any land-owner's premises. Before any resident's land can be taken, he must have six days' notice of the meeting of the viewers, or he must waive that notice. If any man living in the county or having an agent living in the county has neither been served with notice nor waived it, then no matter how valid the

proceedings may be as to every other person, an order establishing the road through *his* land will be absolutely void. Not only so, but the order will be void if notice has been served on the land-owner, unless a copy of the notice, with an affidavit proving its service, is filed with the county clerk *before* the order establishing the road is made. (23 Kas. Rep. 731, 732.) After the Supreme Court had decided otherwise as to the law as it then stood (12 Kas. Rep. 531), the Legislature added to section 4 these words: "Copies of said notice to owners of lands, with affidavits of service attached, shall be filed in the county clerk's office *before said road shall be established;*" and the Supreme Court afterwards decided that these words had the effect of denying to the commissioners the power to order the road to be recorded unless the copies and affidavits had been filed. (23 Kas. Rep. 731, 732). One more thing is necessary to the power to establish the road—there must be a *favorable* report by the viewers, and the report must distinctly show or state that the road will be of public utility. Unless the report is favorable, and unless it shows the road will be of public utility, the commissioners are powerless to establish it. (35 Ohio State Rep. 445, 446.)

Procedure.—Although the power exists, and everything necessary to jurisdiction has been done, the order establishing the road may still be *voidable* because of irregularity in the proceedings of the commissioners, the clerk, the surveyor, the petitioners, or the viewers. The proceedings are laid down in the statute, and that statute must be substantially complied with. Nothing can be done but what the statute prescribes, nor in any other way than that which it lays down. (24 Ohio State Rep. 66.) To begin with, the record of the proceedings must show a *finding*—a *decision based upon some evidence*—that the petitioners are householders, or the whole proceeding will be void. (18 Kas. Rep. 132, 398.) If one of the viewers was not a householder, or was not disinterested—as, if he were one of the petitioners (13 Rhode Island Rep. 129); or if the viewers, or one of them, improperly behaved, in such a way as would be improper in a juror (49 Connecticut Rep. 229); or if the petitioners have bribed or "bought off" an opponent of the road. (35 Ohio State Rep. 455); or if only two viewers acted, the other not having been notified of his appointment (7 Ohio State Rep. 16; 8 Kas. Rep. 258), all these, and many other objections may be urged against the regularity of the proceedings; but the party contesting the road should appear before the commissioners when the report of the viewers is considered, and by affi-

davit or otherwise make the record, or the papers on file, show these outside facts, in order that they may be brought before the district court, if a petition in error should become necessary.

The Decision.—Objections to the final order establishing the road will be, either that the previous proceedings have been irregular, or that the board has no jurisdiction, or that the road will not be of public utility, or will work unnecesarry inconvenience or hardship to some person affected by it. The legal objections have already been considered; and the other objections have been discussed in the chapter on "WHAT THE VIEWERS ARE TO DO," so that nothing further need be said here as to the grounds of contest.

THE MODE OF CONTEST.

Before the final order of the board, there can be no contest in court, but the conflict must be before the county commissioners (32 Kas. Rep. 507–509); for up to that time the commissioners have not accomplished anything. After the final order has been made, the party desiring to contest may take a general appeal, under section 30 of chapter 25 of the General Statutes, as a person "aggrieved" by the decision (18 Kas. Rep. 575); or he may obtain a complete transcript from the county clerk of the record and papers, and file a petition in error (24 Kas. Rep. 512, 513; 18 Kas. Rep. 129, 130); or, he may resist the road overseer when he seeks to open the road, and thus have himself arrested for obstructing a highway (23 Kas. Rep. 731, 734; 12 Ohio State Rep. 635, 636); or, he may sue the road overseer for trespassing when he has entered upon the land to open the road; or, which is the more usual course, he may bring a suit to enjoin the township trustee and road overseer from attempting to open the road through his lands. (32 Kas. Rep. 555; 28 Kas. Rep. 625; 26 Kas. Rep. 345; 18 Kas. Rep. 386–396.)

If a petition in error or an injunction suit be brought, the "principal petitioner" must be made a defendant to the petition or suit, and, perhaps, the county board also; but the "principal petitioner" *must* be made a party, or the court will refuse to act. (24 Kas. Rep. 511; 30 Kas. Rep. 583.) Fuller discussion of these matters would lead into a wide field, and would not be proper in such a manual as this; besides, no prudent man will attempt to conduct his own suit, unless he be a lawyer, and if a road is to be contested seriously, counsel should be employed at an early stage of the proceedings for that express purpose.

VIII—*ABANDONMENT OF ROADS.*

It has been held that "unopened," in the statute declaring roads abandoned in certain cases (section 74), means simply roads authorized, but which have *never been* opened (30 Kas. Rep. 559; 19 Ohio Rep. 367); that a mere temporary abandonment of part of a road once opened, because of some obstruction, will not work a loss of the road under this statute; but there must be an evident intention by the public to wholly abandon the use of the road (30 Kas. Rep. 559; 28 Kas Rep. 715, 721, 722); and that whenever all is done which the law and necessity require to be done in order to render the road open for public use, the road is not then an "unopened" road, within the meaning of the statute; and that when the road has been thus once legally opened, abandonment for ten years *afterwards* will have no effect. (30 Kas. Rep. 560, 561. Thus, making an opening in fences for the road was held to be a sufficient opening of the road to prevent the application of this statute, although a tenant was given permission to put up bars for the protection of his crop until he could get it off. (59 Illinois Rep. 306, 310.) But, to prevent the operation of the statute as to abandonment, the *whole* road must have been opened; and, it has been held, that if it is clear that the whole road cannot be opened before the time prescribed in the statute shall have expired, the overseer may be enjoined from opening any part of it, though as yet the time has not expired. (34 Illinois Rep. 320.) Time consumed in litigation over the road, by appeals, injunctions or other means of contesting the right to establish it or the legality of the proceedings, is not to be counted as part of the period within which the road must be opened or become abandoned. So it has been elsewhere decided, and it seems reasonable and in harmony with the usual construction of similar statutes as to other matters. (38 Illinois Rep. 347.)

IX—*THE ROAD-IMPROVEMENT LAW.*

(See COLLATED ROAD STATUTES, §§75 to 85.)

At its session for 1887, the legislature passed an act making provision for the *improvement* of county roads; and as the subject falls within the province of this book, it is proper to consider here the construction of the new law. But, the act having been so recently passed, of course no decisions concerning it have yet been rendered by our own supreme court, and the author has been unable to find in the reported decisions of any other State, any construction of a similar law; and, therefore, what is said here must be understood to be simply the author's best judgment as to the interpretation of the provisions mentioned; not as settled and irrevocable law. The act deals in such general terms and is so meagre in details, not to mention important and embarrassing omissions to be presently considered, that any one intending to institute proceedings for improving a road should consult counsel he can rely upon at the very start; and what will be said here will be in the nature of advice given to such an one, if he chooses to rely upon the author's judgment.

The *improvements* contemplated by this act must be of a more permanent and expensive character than those which can be made under the ordinary laws; for otherwise there would have been no use for this enactment. The improvement intended is such as macadamizing, or the like, so as to assimilate county roads to the improved streets of the cities. And it should be borne in mind that even this sort of improvement can be made by each township, of the parts of roads lying within it, by means of township taxes—thus casting the public burden upon all alike. (See PART II, §§66–73 inclusive, of COLLATED ROAD STATUTES.) Under the new law, however, all the incidental expenses and fees, and one-third the cost of the improvement, is to be paid out of the general revenue of the county, and the remainder is to be apportioned, according to special benefits, upon the lands lying within half a mile on each side of the road throughout the length of the improvement; and the assessments may be made less burdensome by being distributed over a period not exceeding five

years. The *improvements* to be made, then, are such as cannot be made with the ordinary means at the command of road overseers; and those who petition for the improvement are given the exclusive right to say of what nature the improvement shall be. No one else has any power to decide upon that.

The *county commissioners* have nothing to do with the proceedings beyond merely giving them a start; if the petition is proper in form and substance, and signed by the proper majority of landholders, the county commissioners must do as requested, and have nothing to do with the propriety of the improvement or whether the improvement ought to be made. When a regular petition is presented, they *must* order a survey, estimates, specifications and a map to be made and filed; and when that has been done, road commissioners *must* be appointed; and when these have qualified, the county commissioners have nothing more to do with the proceedings, unless it should become necessary to remove a road commissioner or to appoint a new one to a vacancy; or in case of an appeal by a land-owner from the assessment. All else devolves upon the road commissioners.

Again, the *road commissioners* have not much to do. Having qualified, they are to choose one of their number chairman and another secretary; and then select some suitable person —one of themselves or some one from outside—to act as superintendent; and then, having given notice and let the contract, the actual execution of the work devolves upon the superintendent and the contractor. The road commissioners are also to pay the contractor by issuing certificates of indebtedness; and when the work has been completed, they are to make the assessments upon the adjacent lands to pay the two-thirds of the expense; when this has been made and returned to the county clerk, the road commissioners and their superintendent go out of office.

The contract must be let to the lowest bidder after "due" notice of the letting; but what this "due" notice shall be is left to the judgment of the commissioners themselves. Of course, it should be given in such a way and for such a time as to insure competitive bidding; and the contractor must give a bond in double the amount of his contract. The secretary is to keep a full record of all the proceedings of the commissioners, and this must be filed with the county clerk upon the completion of the work. The assessments are to be entered on the tax rolls by the county clerk, and during the

time the assessments run the lands assessed are to be exempt from all other road taxes.

This is in substance what the act provides; and it will be seen that it nowhere requires any notice of the proceedings to be given to the landholders, although their lands are to be assessed for the improvement. The majority of the *resident* landholders may own but a small proportion of the lands to be subjected to the assessment; yet, there is no provision for giving notice so that those who do not petition can be heard. As the county commissioners *must* act upon the petition, and have no discretion, notice of the presentation of the petition could do no good, and for that reason, perhaps, none is necessary. If the petitioners are not a majority, or if the petition itself is materially defective, the proceedings will be void as to non-petitioning landholders, and that is protection enough. But it has been settled beyond further controversy that no such assessment can be made a charge upon land without notice to the landholder and a chance to be heard at some stage of the proceedings before the charge becomes fixed, for the constitution of the United States provides that no man shall be deprived of his property without "due process of law;" and such an assessment does deprive him of his property, and no proceeding without notice and opportunity to be heard in opposition can be "due process of law." This much is settled. "Before special taxes can be made a fixed and permanent charge upon the property of such individuals, they must have notice, with an opportunity to be heard, and an opportunity to contest the validity and fairness of such taxes." (33 Kas. Rep. 156.) Does this omission make the statute void? In New York it has been decided that it does, (74 New York Rep. 183,) but our supreme court has decided otherwise, and has held that as the constitution requires a notice, it must be presumed the legislature intended it should be given—that we are not to suppose the legislature intended to ignore the constitution; but as the statute says nothing about notice, a wide discretion is left to those carrying on the proceedings, as to the kind of notice to be given, and the manner of giving it. (33 Kas. Rep. 156–171.) Besides, section 253 of our code of civil procedure, (Gen. Stat., ch. 80, sec. 253,) provides for an injunction, by the owners of property affected, to enjoin the levy or collection "of any illegal tax, charge, or assessment, or any proceeding to enforce the same;" and the United States supreme court has decided that such a provision gives the landholder sufficient opportunity to be heard and to contest the assess-

ment. (95 U. S. Sup. Ct. Rep. 37.) So, it is probable the proceedings would be valid, even if the statute were simply followed out as it reads, and if no notice should be given, leaving the landholder to his remedy by injunction; and at all events, it is pretty certain that the law is valid. However, our supreme court has decided that notice must be given, though not mentioned; and this is not only the juster as well as the safer course, but that decision must be treated as part of the law; so we are to read this statute precisely as if it said that the road commissioners, when they are about to make the apportionment and assessment, shall give such notice of their proposed meeting, for such time and in such manner as they shall deem proper and reasonable, to all owners of lands lying within the district to be assessed. To give any notice before this would be a mere idle form; for when fully notified and present, there would be nothing the party could contest; but when the time comes to fix a definite charge upon his lands, based upon the relative damage and benefit of the improvement to his lands, as compared with the damage and benefit to the lands of others; when the hitherto uncertain charge is to be fixed and become a lien, then he has a right to be heard. The road commissioners, therefore, should, either by advertisement in the newspapers, or otherwise, give notice for a reasonable time in advance of their meeting to apportion and assess.

Another matter left cloudy is, whether the expense is to be paid all in one assessment after an interval of not exceeding five years, or in annual installments running through the period fixed for payment; and again, how the certificates are to be issued—whether without reference to the annual installments, or classified so as to have a portion of them fall due each year; and from what date is the time fixed for payment to begin to run—from the completion of the work or from the time for the assessment and collection of taxes for the first time after the apportionment? The law leaves it to the petitioners exclusively to fix "the time for which assessments in payment" are to be made; (sec. 76;) and it would be an easy matter to prevent all doubt by saying that the payment should be made by equal annual assessments during a period of so many years; and it seems certain that payment by installments is intended. As the certificates are to be issued "payable in the time mentioned in the petition," it follows that where the assessments are to run two years or more, the certificates must be issued in classes so that part shall fall due

each year. When it is said the time for which *assessments "are to be made"* shall be fixed, and that the certificates shall be "payable in the time mentioned in the petition," undoubtedly the meaning is, not that the payment shall be made within so many years from a fixed date, but that payment shall be made by assessment to be put on the tax roll and collected each year during the prescribed number of years; the whole matter having reference to the usual machinery of taxation. Thus, no matter when the work shall be completed nor when the apportionment shall be made, the first assessment will not become due until the next regular time for turning over the tax rolls to the county treasurer; for the assessments are to be "collected as other taxes," and that means *with* other taxes, and no collection can be made until the time comes to collect other taxes. This will be the starting point for the payments.

The petition for the road should contain a very definite statement of the "*kind* of improvement prayed for." This must be fixed by the petition, and upon what it prays for, everything afterwards must be based; the improvement actually made must be the improvement described in the petition; and no one has power to change the nature of it after it has once been commenced.

The petition must be signed by "a majority of *the resident* landholders within one-half mile on either side"—does that mean that, to be counted in making up this majority, the landowner must not only own lands within the limit but have his residence within it, too? or that it matters not in what part of the world his land is, if only he is a landholder and lives within the half-mile limit? or that he need only be a resident of the county, or of the State, and own land within the half-mile limit? It must mean one of these descriptions of persons, and it can mean only one; and a mistake in this respect in calculating a majority for the petition may make the whole proceedings void. Now, if we say the landholder need not personally live within the limit, but if he has lands within it he may be a resident of the county or of the State, we are at once in trouble; for *of which* shall he be a resident—the county or the state? or why of either more than of a township? The fact is, if we once leave the half-mile limit we have nothing at all to go by but the single word "resident," which, by itself, means nothing at all—one can be a resident only of *somewhere*, not a resident generally. And if we say, if he is a landholder and lives within the limit, it is immaterial whether the land

he holds is within the limit or not, we are supposing that men having no interest in the improvement, and who are not to be assessed for it, are to be counted, while those who are to pay for the improvement are not to be thought of because they live elsewhere. Both the letter and the policy of the statute lead to the conclusion that those to be counted are those who both own lands within the half-mile limit and live within it. Although one may own land along the line of the road, yet if he does not personally live there so as to have occasion to use it and be annoyed or injured by the condition of the highway, he may not be willing to have it improved and be subjected to the expense thus incurred, although every man living on the road may be virtually deprived of its use for a large portion of every year; while, on the other hand, one living within the limit, but having no land there to be assessed for the expense, might be altogether too eager to provide for his own convenience at the cost of others; but when one lives along the line of the road so as to personally suffer the inconvenience caused by its defective condition, and, at the same time owns lands which will be assessed for any improvement that may be made, his personal convenience and his liability to be assessed balance each other, and his desire, prompted by personal inconvenience, is tempered by prudence, suggested by his liability to assessment. This is the combination of conflicting self-interests the legislature doubtless intended to rely upon. This construction has been adopted as to a similar case in Wisconsin. (29 Wisconsin Rep. 419–427.)

If this construction is correct, then, of course, if the landholder lives outside the limit, though but a short distance, he is no more to be counted than if he lived in another state, although most of his lands lie within the limit; for if he is to be counted when he lives five feet over the line, why not when he lives five miles beyond it as well? There is no limit but the half-mile limit. Outside that is boundless space. Having drawn that line, whoever is outside at all is fully outside, no matter what the distance. So, a majority of those who own lands within a half-mile on either side of the middle of the road, and who also live within that distance, and those whose lands and whose residences are also between the beginning and the end of the distance to be improved, must sign the petition.

While the county commissioners must act when the petition is presented, still they are to act only when such a petition as the law requires is presented. Hence, they must determine

whether it is proper in form and full enough to be intelligible as a basis for estimates; and they must decide whether the signers constitute a majority of those to be counted. Some evidence will be necessary as to this, and an affidavit, at least, will be required.

It may be taken for granted that by a "regularly laid out road" the legislature means one laid out and established according to the road laws. Whether a road has become such by prescription, by dedication, by estoppel or by long and undisputed use, is a question which depends upon evidence, and which only a court can settle; and as improving a supposed road would not make it a public road if it had not already become one, the land-owners assessed to pay for expensive improvements might find at last that they had been improving mere private property, and had lost their money. The county board cannot settle such questions as arise out of claims to prescriptive right or dedication, and the law has given them no right to do so; but whether a road has been "regularly laid out," in the usual statutory way, can be told by a glance at the road record. So it may be assumed that this class of roads alone can be improved under the new law. It may also be assumed that when the statute speaks of improving *part* of a road, it means a part considered with reference to length only—not that one side of the road, or a portion of it in width, can be improved, leaving the remaining width as it was. Likely, too, there will be little dispute that the half-mile limit "on either side" of the road is to begin in the middle of the road—not at its outward lines.

PART II.

Collated Road Statutes.

COLLATED ROAD STATUTES.

[N. B.—The main statute is chapter 108, Laws of 1874. The sections of that statute are here indicated by double section numbers, the numbers written in brackets being the original numbers of the sections as they stand in the statute. It was necessary to break up the original arrangement of the law, in order to group together the various kindred provisions. *Every section with a number in brackets belongs to the road law of* 1874.]

PETITION AND BOND.

§ **1** [1]. That applications for laying out roads, or for viewing, reviewing, altering, or vacating any road, shall be by petition to the board of county commissioners, signed by at least twelve householders of the county, residing in the vicinity where said road is to be laid out, viewed, reviewed, altered, or vacated; and one or more of the signers of any petition presented as aforesaid shall enter into a bond with sufficient security, payable to the State of Kansas, for the use of the county, to be approved by the county commissioners, conditioned that the persons signing such bond shall pay into the treasury of the county the amount of all costs and expenses accruing on said location, view, review, alteration, or vacation; in case the proceedings had in pursuance of said petition shall not be finally confirmed and established, and on neglect or refusal of the persons so bound, after a liability shall have accrued, the county clerk of the county shall collect, or cause to be collected, such costs and expenses, and pay the same into the county treasury.

§ **2** [2]. All petitions for laying out or altering roads shall specify the place of beginning, the intermediate points, if any, and the place of termination of such road.

APPOINTMENT OF VIEWERS AND GIVING NOTICE.

§ **3** [3]. Upon presentation of any petition for a road, or for the alteration or vacation of any road, to the county commissioners, at any regular session of their board, it shall be the duty of said commissioners, if they find the petition to be a legal one, and that the proper bond has been filed, to appoint three disinterested householders of the county as viewers, and

the county clerk shall give notice by advertisement set up in the county clerk's office, and in every municipal township through which any part of said road is designed to be laid out, altered, or vacated, for at least twenty days, and by publication for two consecutive weeks in a newspaper, if there be one published in the county, setting forth that such petition has been presented, giving the substance thereof, and that viewers will, on such day as the commissioners have designated, not more than twenty days after the expiration of the notice herein required, proceed to view said road, and give to all parties a hearing. They shall also cause a record of such notice to be entered on their journal by the county clerk. They shall issue an order directing the county surveyor to meet with them at the time and place named in said notice, to survey such road. In case of failure to meet on the day designated, they may meet on the following day, without further notice; and in case of failure to meet within the time herein specified, new notice shall be given as hereinbefore provided; that in all applications for the location, change and relocation of any road to be located upon or along any section line, and the petition shall so state, and shall specify the section lines to be followed, the place of beginning and the place of ending, the survey may be dispensed with; and in case the owners of the lands taken agree in writing to the proposed location, relocation, or change, and the commissioners are satisfied that the location, relocation or change prayed for is practicable, and can be made without unreasonable expense, they may dispense with the viewing of such location, relocation, or change of road, and shall order the same to be opened, and shall also direct the county clerk to note such location, relocation or change of roads upon the road records of his office.

§ **4** [4]. It shall be the duty of at least one of the petitioners to cause six days' notice to be given in writing to the owner or owners, or their agents, if residing in the county, or if such owner be a minor, idiot or insane person, then to the guardian of said person, if a resident of the county, through whose land such road is proposed to be laid out and established, and also six days' notice to the county surveyor of the time and place of meeting, as specified in the notice of the commissioners. Copies of said notice to owners of lands, with affidavits of service attached, shall be filed in the county clerk's office before said road shall be established.

VIEW, SURVEY, DAMAGES, REPORTS, FINAL ACTION.

§ **5** [5]. It shall be the duty of the viewers, or a majority of them, and the county surveyor, to meet at the time and place specified in the notice aforesaid, or on the following day thereafter; and they may, if they deem it necessary, take to their assistance two suitable persons as chain carriers, and one as marker, and then proceed to view, survey, lay out, alter or vacate the road as prayed for in said petition, or as nearly so as a good road can be made at a reasonable expense, taking into consideration the utility, convenience and inconvenience and expense which will result to individuals as well as to the public, if such road, or any part thereof, shall be established and opened or altered. Said viewers shall also assess and determine the amount of damages sustained by any person or persons through whose premises the said road is proposed to be established. Such viewers shall not assess or award damages or compensation to any person or persons in consequence of the opening of said road, unless the owner or owners, or their agents or guardians, having been duly notified as provided in section 4, of the applications and proceedings by which their property is sought to be appropriated or damaged, shall have filed a written application with said viewers, giving a description of the premises on which damages or compensation are claimed at the time of said view and hearing, as hereinbefore provided for: *Provided*, That in case any person has not received the notice of the view of said road, as provided for in section 4, he may at any time within twelve months after the location of said road file an application for damages with the county commissioners, who shall determine the amount of damages sustained by such claimant; and all applications for damages shall be forever barred unless they are presented as provided for in this act.

§ **6** [6]. The surveyor shall survey the said road under the direction of the viewers, and cause the same to be conspicuously marked throughout, noting the courses and distances. He shall also make out and deliver to the county clerk, without delay, a correct and certified return of the survey of the said road, and a plat of the same. And the viewers shall make and sign a report in writing, stating their opinion in favor of or against the establishment, alteration or vacation of said road, or any part thereof, and set forth the reason of the same; which report shall be delivered to the county clerk by one of the viewers on or before the first day of the session of the county commissioners then next ensuing, and it shall be

the duty of the commissioners, on receiving the report aforesaid, to cause the same to be read before their meeting; and if said report is favorable, and no legal objections appear against said report, and they are satisfied that such road will be of public utility, they shall order said report, survey and plat to be recorded, and from thenceforth said road shall be considered a public highway, and the commissioners shall issue their order to the trustees of the respective townships in which such road is located, directing them to cause the same to be opened for the public travel; but if the report of the viewers be against such proposed road or alteration, and in the opinion of the commissioners said report is a just one, and that such road, as applied for, is unnecessary, then no further proceedings shall be had thereon; and the obligor or obligors in the bond securing costs shall be liable for the full amount of all costs accrued by reason of the view of said road.

§ 7 [7]. It shall be the duty of the viewers, at the same time that they make their report of the view, to make also a separate report to the county commissioners, in writing, stating the amount of damage, if any, by them assessed, and to whom. They shall also be required to submit with such report the written application on which assessments have been made. All allowance for damages, as provided in this act, shall be subject to revision by the said board of county commissioners, and any person feeling himself aggrieved by the award of damages made by the board of county commissioners may appeal from the decision of the said board of county commissioners to the district court, upon the same terms, in the same manner and with like effect as in appeals from judgments of justices of the peace in civil cases.

REVIEW OF ESTABLISHED ROAD.

§ 8 [8]. When the place of beginning or true course of any road shall be uncertain by reason of the removal of any monument or marked tree by which the road was originally designated, or from any other cause, the county commissioners of the proper county may appoint three disinterested householders of the county to review and straighten said road, if they deem it necessary; and the county surveyor shall survey the same, and said reviewers and surveyor shall view and survey said road, and the same correctly mark as in the case of new roads, and shall make a correct return of said survey and a plat of said road to the commissioners, who shall cause the same to be recorded as in other cases, and from thence-

forth said road, surveyed as aforesaid, shall be considered a public highway.

ROADS ON COUNTY OR CITY LINES.

§ 9 [9]. When it shall become necessary to establish a road on a county line, the inhabitants along such line may petition the board of commissioners of their respective counties for a view of said road in the manner hereinbefore provided; and it shall be the duty of the board of commissioners for each of the counties interested, to appoint three disinterested householders as viewers, who, or a majority of them, shall meet at the time and place named in the order of the county interested first, in alphabetical order, together with the surveyor of such county; and the viewers and surveyor aforesaid shall assess all damages, and shall in all respects be governed by the preceding provisions of this act; and the viewers and surveyor aforesaid shall make their report in writing for or against such road, and the commissioners upon receiving such report shall be governed by this act; and when it shall become necessary to establish a road on the line of any city, the board of commissioners of the county and the corporate authorities of such city may each appoint three householders as above, who shall proceed, as directed herein, to lay off a road of the width of sixty feet along such line, one-half on the side of the city, and the other half on the side of the county; or the said viewers may act separately in laying off so much of said road as lies within the corporate limits of said city, or county outside of said city.

§ 10 [10]. If on receiving such report, and there being no legal objection thereto, and the commissioners of all the counties interested, or a majority of them, shall be of the opinion that said road, if opened, would be of public utility, they shall order the same to be opened in the manner provided in this act.

COMPENSATION OF VIEWERS, ETC.

§ 11 [11]. All persons required to render services under this act shall receive compensation for each day they shall necessarily be employed, as follows, to wit: Viewers, two dollars each; chain carriers and markers, one dollar and fifty cents each; to be charged as cost and expense, and paid out of the county treasury on order of the commissioners.

OBSTRUCTION OF HIGHWAYS.

Natural or Accidental.

§12. It shall be the duty of the road overseers of the several counties of this State to remove, or cause to be removed, at least once each year, between the fifteenth day of June and the fifteenth day of July, in the public highways, all cocklebburs, Rocky Mountain sand-burs, burdocks, sunflower, Canada thistles, and such other obnoxious weeds as may be injurious to the best interest of the farming community. (Laws 1883, ch. 150, sec. 1.)

§13. The road overseers in the several counties in this State are hereby directed to carry section one of this act into effect, under the provisions of chapter one hundred and eight (108) of the Session Laws of eighteen hundred and seventy-four. (Laws 1883, chap. 150, sec. 3.)

§14 [27]. If at any time any highway shall be obstructed or become impassable, or any bridge shall be impaired so as to be unsafe, it shall be the duty of the overseer of the district in which such obstruction, impassable road or impaired bridge may be situated, to cause such obstruction to be removed, or such road or bridge to be repaired forthwith, for which purpose he shall order out such number of persons liable for road tax in his district as will be necessary to make said repairs; and every person so ordered out, who shall refuse or neglect to attend with the proper implements, or shall spend the time in idleness after reporting for labor, shall be liable to a fine of five dollars.

§15. The township trustee may remove obstructions from the highways in cases where the road overseers shall refuse or fail to do so; and the trustee shall, in such cases, have all the power of road overseers in calling out the inhabitants to perform the work necessary to remove such obstruction. (Laws 1871, ch. 153.)

§16 [13]. The county commissioners are hereby authorized, whenever in their judgment the inconvenience to the public will not be too great, to allow any person through whose land a road is laid out to maintain convenient gates for a time sufficient to grow a hedge, not to exceed five years.

§17. It shall be lawful for any owner, agent or lessee of any land not within the limits of any incorporated city, who may wish to grow a hedge or hedges on any land by or through which any public highway is now or may hereafter be located, to set his or their fence, as the case may be, out into any public highway or street any distance not exceeding eight feet from the side line of such public highway or street, and may continue to maintain such fence in such public highway or street for any time not exceeding five years from the time of setting such fence in such public highway or street: *Provided*, Such fence shall not remain in such highway or

street more than two years, unless such person shall plant a hedge along the line of such public highway. (Gen. Stat. 1868, p. 494, sec. 1; Comp. Laws 1881, p. 453, sec. 35.)

Slack Water Navigation Companies.

§ 18. That in case any public highway shall be destroyed or obstructed by the flowage of any stream in consequence of the erection of any dam or dams, or otherwise, such corporation shall bridge such stream at the place or places where such highways have been destroyed, and maintain the same; and in case of partial destruction of such highway, the said highway shall be repaired, and maintained as a good, passable highway by such corporation. (Laws 1875, ch. 75, proviso to sec. 6.)

§ 19. At any or all points where any railroad crosses any public highway, the railroad company owning said railroad shall, without any unnecessary delay, construct good and sufficient and safe crossings. (Laws 1869, ch. 81, sec. 2.)

§ 20. Every railway corporation shall * * have power: * * *Fourth*, To construct its road across, along or upon any * * highway * * which the route of its road shall intersect or touch; but the company shall restore the * * highway * * thus intersected or touched to its former state, or to such state as to have not necessarily impaired its usefulness. (General Statutes 1868, chap. 23, sec. 47, subdivision 4; Comp. Laws 1881, p. 224.)

§ 21. Corporations created for the purpose of constructing and maintaining magnetic telegraph lines are authorized to set their poles, piers, abutments, wires, and other fixtures, along, upon, and across any of the public roads, streets, and waters of this State, in such manner as not to incommode the public in the use of such roads, streets and waters. (Gen. Stat. 1868, p. 210.)

Telephone Companies.

§ 22. All such corporations shall have all the rights and powers conferred, and be subject to all the liabilities and duties imposed by the general laws of this State upon telegraph corporations. (Laws 1885, ch. 104, sec 1.)

Moving Steam Machinery Over Highways.

§ 22*a*. All persons owning, controlling, operating or managing steam threshing machines, saw mills, or steam traction engines of any kind, in moving the same over the public highway, are required to lay down planks not less than one foot wide, three inches in thickness, and of sufficient length, on the floor of all bridges and culverts situate on the public highway, while crossing the same, for the wheels of said engine of any kind to run on while crossing such bridge or culvert: *Provided*, That this section shall not apply to any machine or engine not exceeding one ton in weight. (Laws 1886, ch. 144, sec. 1.)

§ 22*b*. All persons owning, controlling or operating or managing steam traction engines of any kind, in moving the same along the public highway, are required on meeting any person or persons in vehicles of any kind, drawn by horses, mules or other animals, to turn to the right, giving as much of the public highway as possible, and then shut off the steam and come to a halt at the distance of one hundred yards from the person or persons so met, and to remain with steam down and halted until said person or persons shall have passed at a distance of one hundred yards from the place of halting on said highway: *Provided*, That nothing in this section shall prevent any one operating such engine drawing the same by team or teams without making the halt or halts above referred to. (Laws 1886, ch. 144, sec. 2.)

§ 22*c*. Any person or persons owning, controlling, operating or managing any steam traction engine shall, in passing through any village, town or

city, attach a team thereto for the purpose of assisting in drawing the same. (Laws 1886, ch. 144, sec. 3.)

§ 22*d*. Any person or persons violating the provisions of this act shall be deemed guilty of a misdemeanor, and shall, upon conviction therefor, be fined in a sum of not less than five dollars nor more than two hundred dollars for such offense. (Laws 1886, ch. 144, sec. 4.)

Unlawful.

§ 23 [17]. If any person shall willfully demolish, throw down, alter or deface any mile-stone or guide-board on or at the forks of any roads, or shall willfully obstruct any such road by any means or in any manner whatever, every person so offending shall, on conviction, be adjudg d guilty of a misdemeanor, and be punished by imprisonment in the county jail not exceeding three months, or by fine of not less than twenty nor more than one hundred dollars, or by both such fine and imprisonment, which fine shall be paid by the officer receiving the same into the county treasury for school purposes. And every person obstructing any such road as aforesaid shall also be liable in a civil action for all damages sustained by any person who has in any manner whatever been damaged by reason of such obstruction.

§ 24. It shall be unlawful for any person or persons to hereafter plow up the public highways for the purpose of scouring plows, or for any other purpose, except it be under the direction of the overseer of public highways; and any person or persons violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction before any court having competent jurisdiction shall be fined for each and every offense under this act, in a sum not exceeding ten dollars nor less than three dollars, with cost of suit. (Laws 1883, ch. 150, sec. 2.)

§ 24*a*. Any person being the owner of any domestic animal or animals, or having the same in charge, who shall turn out or suffer any such domestic animal or animals having any contagious or infectious disease, knowing the same to be so diseased, to run at large upon any uninclosed land, common or highway, or shall let the same approach within one hundred feet of any highway, or shall sell or dispose of any domestic animal or animals, knowing the same to be so diseased, without fully disclosing the fact to the purchaser, shall be deemed guilty of a misdemeanor, and shall be punished by a fine in any amount not exceeding five hundred dollars, and imprisoned in the county jail not more than six months. (Laws 1886, ch. 158, sec. 1.)

§ 24*b*. Any person violating any of the provisions of this act, in addition to the penalties therein provided, shall be liable for all damages that may accrue to the party damaged by reason of said diseased animal or animals imparting disease. (Laws 1886, ch. 158, sec. 2.)

PROVISIONS FOR PUBLIC SAFETY AND CONVENIENCE.

§ 25 [14]. Each overseer, within his district, shall erect and keep up at the expense of the township, posts and guide-boards at the forks of every State and county road, containing an inscription in legible letters, directing the way and naming the distance to such cities as are situated on said road; and any road overseer failing to do so in a reasonable time, not to exceed six months, shall, upon conviction thereof before any justice of the peace of the proper county, be fined in any sum not exceeding five dollars, with costs of suit; and such fine, when collected, shall be paid into the county treasury for school purposes.

§ 26 [31]. It shall be the duty of the township trustees of the several townships in each county of this State, to cause to be put up and kept in good repair at each end of each and every bridge erected by the county upon any highway in their respective townships, of a span of not less than twenty-five feet. a notice, which shall be printed in conspicuous letters, with the

following words: "Five dollars fine for riding or driving over this bridge faster than a walk."

§ **27** [32]. It shall be unlawful for any person or persons to ride or drive any horse, mule, ass or ox over any such bridge in this State faster than a walk, or drive more than fifty head of cattle on such bridge at one time; and any person who shall so unlawfully ride or drive such horse, mule, ass or ox over such bridge, or drive over the same more than fifty head of cattle at any one time, upon conviction thereof shall pay a fine of five dollars, and costs of suit.

§ **28.** Each road overseer, within his district, shall erect and keep up, at the expense of the township, posts or boards at the fords of every river or creek that in high water becomes impassable; which posts shall be set at or near low-water mark, on which shall be inscribed in legible letters, or plain figures, the depth of water at low water, together with a scale of feet showing the scale of feet above low-water mark to the height which said stream is known to have risen. (Laws 1869, ch. 83, sec. 1.)

WIDTH OF ROADS.

§ **29** [28]. The width of all county roads shall be determined by the viewers at the time of establishing the same, and shall not be more than eighty nor less than forty feet: *Provided*, That in cases where a growing hedge, or other permanent improvement, the removal of which would cause too great an expense, the viewers may determine the width of the road at not less than thirty feet; and in cases where a growing hedge or permanent improvement on or near one side of the proposed road precludes the road being laid equally on both sides of the line, the viewers may establish all or any part of said road on the side of the section line not encumbered by improvement.

PRIVATE ROADS.

§ **30** [29]. That whenever the premises of any person in this State shall be so completely surrounded by adjoining lands, the property of other persons, as to be without access to any public highway, then such person may petition the board of county commissioners of the county in which such premises lie for a road through some portion of the adjoining lands; and the board shall, on the presentation of such petition, proceed in accordance with the provisions of the foregoing sections to lay out such road, make returns of plats, and allow damages, if any should be held or allowed, provided said road

shall not exceed twenty-five feet in width, and be laid out upon the section or half-section lines when practicable.

§ **31.** That when any landholder, who has no road or highway, desires the benefit of a road or highway, such person may petition the county commissioners of the county in which such person resides to open a private lane or road to a public highway, when it shall be the duty of said commissioners to appoint three disinterested viewers to view and open a lane or road by the nearest and most practicable route to an established highway: *Provided*, That said lane or road shall follow or run parallel with some section or subdivision line; said road not to exceed two rods in width. (Laws 1874, ch. 112, sec. 1.)

§ **32.** Said viewers shall assess all damages, when damages are claimed, and the road shall be declared opened when the damages, if any, are paid. (Laws 1874, ch. 112, sec. 2.)

§ **33.** That no portion of the expense of viewing and locating roads under this act shall be chargeable to the county or State, but shall be paid by the person for whose benefit the road is located. (Laws 1874, ch. 112, sec. 3.)

AVENUES, STREETS AND ALLEYS.

§ **34** [15]. All avenues, streets and alleys in cities, which are or may hereafter be laid out agreeably to law, shall be and the same are hereby declared public highways: *Provided*, That the municipal authorities of any incorporated city may make, ordain and enforce such ordinances concerning the sidewalks of the streets of such city as shall be deemed necessary to prevent such sidewalks from being used for the passage of horses, wagons and carriages, or hitching horses or other animals thereon.

GENERAL DUTIES AND POWERS AND COMPENSATION OF ROAD OVERSEERS.

§ **35** [12]. It shall be the duty of each and every road overseer to open or cause to be opened all county and State roads and highways which have been or may hereafter be laid out or established through any part of the district assigned to such overseer, first giving notice to the owner or owners, or their agent or agents, if residing in the county, or if such owner be a minor, idiot or insane person, then to the guardian of such person, if a resident of the county, through whose inclosed or cultivated lands such road is laid out or established, notifying such owners aforesaid to open said road through their lands within ninety days after service of such notice: and if the per-

son or persons so notified do not open such road within the time named in such notice, it shall be lawful for such overseer or any person under his direction to enter upon said lands and open said road: *Provided*, If such notice be given between the first day of March and the first day of October, the notice shall designate the first day of January next as the time of opening such road; and the overseer shall keep the same in repair, and remove or cause to be removed all obstructions that may from time to time be found thereon, for which purpose the overseer is hereby authorized to enter upon any uncultivated land unincumbered by a crop, near or adjoining the public road, to dig and carry away any gravel, sand or stone, and to purchase any timber which may be necessary to improve or repair said road, and to enter upon any land adjoining or lying near to said road to make such drains or ditches through the same as he may deem necessary for the benefit of the roads, doing as little damage to said lands as the nature of the case and the public good will permit; and the drains and ditches thus made shall be kept open by the overseer, if necessary, and shall not be obstructed by the owner or occupants of said land, or by any other person, under the penalty of being fined not exceeding ten dollars for each offense, before any justice of the peace of the county. Any overseer who shall take away gravel or stone for the purpose of repairing any road, or for building or repairing any bridge, shall, upon the demand of the owner, give a certificate, showing the quantity and value thereof, and the time when taken; and upon the presentation of such certificate to the trustee of the township in which such road or bridge is situated, the owner of such certificate shall be allowed by the township trustee such compensation as may be just and equitable.

§ **36.** That where a road is located on a county or civil township line, and by reason of any impediment, either natural or otherwise, any portion of such road suffers a deflection from such line not exceeding forty rods parallel distance, then for the purpose of improvement such road shall be deemed to be wholly on such line. (Laws 1874, ch. 109, sec. 1.)

§ **37.** All expenses, either in money, material or labor, arising from the improvement of any portion of such road, shall be borne jointly by the counties or townships contiguous thereto, as the case may be. (Laws 1874, ch. 109, sec. 2.)

§ **38** [30]. Each road overseer shall, on or before the twentieth day of March of each year, report to the township trustee the names of all persons subject to the two days' road tax for the

preceding year, the names of those who have worked out said tax, the names of those who have paid said tax in money, and the names of those delinquent; and also all moneys received by him from all sources and how expended, and the account of said road overseer of work performed by himself, which report shall be approved by said trustee before any final settlement shall be made with such road overseer. Each and every road overseer or other officer, who shall neglect or refuse to perform the several duties enjoined upon him by this act, or who shall on any pretense whatever give or sign a receipt or certificate for labor performed or money paid, unless the labor shall have been performed or money paid prior to the signing or giving of such receipt or certificate, every overseer so offending shall forfeit for every such offense not less than five nor more than fifty dollars, to be recovered by an action before any justice of the peace within the township where such overseer may reside; and it is hereby made the duty of every county attorney to prosecute all offenses against the provisions of this act not otherwise provided for.

§ **39** [33]. Road overseers shall be allowed one dollar and fifty cents per day for all services required by this act, and actually performed in their respective districts, exclusive of his own road or poll tax, to be paid by the township treasurer on the order of the trustee: *Provided, however*, That no overseer shall receive pay for more than fifteen days in any one year in addition to his own road tax.

§ **40.** Each road overseer shall keep an accurate account of all moneys received by virtue of his office, and the manner in which the same have been disbursed, and to whom; and shall, on the last Monday* in October in each year, exhibit such account, together with his vouchers, to the township auditing board, for adjustment and settlement. Such account shall be in writing, verified by the affidavit of the overseer that the same is in all respects a full and true account of all moneys received by him during the full term for which he should make settlement, and the amounts expended, and the manner in which they were expended. (Gen. Stat. 1868, ch. 110, sec. 33; amended by ch. 168, Laws 1885; further amended by ch. 140, Laws 1886.)

§ **40***a*. The township auditing board shall annually, on the

*This must be changed thus from Saturday to Monday because of the change made by the Laws of 1887. (See next section.)

last Monday of October in each year, settle with and audit the accounts of the township treasurer and of all road overseers in the township, for all moneys disbursed by them; and the township clerk shall record at length such accounts on the township record. (Laws 1887, ch. 234, sec. 2.)

RESOURCES FOR IMPROVING AND REPAIRING ROADS.

Road Labor.

§ **41** [18]. All male persons between twenty-one and forty-five years of age, who have resided thirty days in this State, who are capable of performing labor on public highways, and who are not a township charge, shall be liable each year to perform two days' work of eight hours each on the public roads, under the direction of the road overseer within whose district they may respectively reside, or furnish a substitute to do the same, or pay the sum of one dollar and fifty cents per day to said road overseer, who shall receipt for the same, and expend it in repairs on the public roads within his district; and any moneys so received and not expended shall be paid over to his successor in office, who shall expend the same as above provided.

§ **42** [19]. The overseer of highways in each road district shall give a notice to persons residing in his district liable to or charged with a road tax, of the time and place he will attend and direct the work to be performed, as aforesaid. The overseer may direct what implements such person shall bring with which to perform such work.

§ **43** [20]. Whenever it shall happen, in consequence of sickness or absence from home, or any other cause, that the two days' work aforesaid shall not be performed within the time specified in this act, the overseer shall be authorized to require the performance of such work at any time prior to the first day of October then next ensuing; and in case any person shall neglect or refuse to do the two days' work or furnish a substitute, or pay the said sum of one dollar and fifty cents per day, as provided in this act, he shall be deemed guilty of a misdemeanor, and shall be fined in the sum of five dollars for such refusal so to work, upon conviction before any justice of the peace of the township. If any person shall appear at the proper time and place as directed by the overseer, and neglect or refuse to do a reasonable day's work, according to his

ability, he shall be liable the same as if he neglected or refused to appear or furnish a substitute, or pay the said sum of money as provided herein.

§**44** [25]. It shall be the duty of each road overseer to receipt to each person who performs labor on the public highways of his district, under the provisions of this act, for the amount of labor so performed, and he shall specify the land or lands or the persons for which such labor was the payment of road tax, which receipt shall be received by the county treasurer in payment of road taxes charged against the lands or persons described therein for the year; and in case the labor performed by any person shall exceed the amount of road tax which such person wishes to pay for that year, the road overseer shall give such person a certificate showing that such person has performed such amount of labor, which certificate shall be received by the county treasurer in payment of such person's road tax for the following year; and the county treasurer shall receive no per centum on the amount of road taxes thus paid and receipted.

Convict Labor.

§**45.** That the board of county commissioners of any county in this State may, whenever they may deem it advisable so to do, properly shackle and work, under such rules and regulations as they may from time to time ordain and establish, each and every male prisoner committed to the jail of their respective counties for failing to pay the fine and costs adjudged against such prisoner on his conviction and increased costs, and also any male person failing to pay the costs adjuged against him as the prosecuting witness in any criminal proceeding. (Laws 1881, ch. 127, sec. 1.)

§**46.** That the board of county commissioners may establish a county stone yard, and work male prisoners mentioned in the first section of this act at breaking stone for use in macadamizing streets and roads, under such rules as they may from time to time ordain and establish. (Laws 1881, ch. 127, sec. 2.)

§**47.** That the board of county commissioners of the proper county are authorized to sell or dispose of such stone as they may have had broken on such terms as they may deem advisable, or in case they cannot sell the same, to use the same for the improvement of some designated road or street; and on making a sale of such stone, the money arising therefrom shall be used to pay for stone delivered at the county stone yard, and the remainder shall be applied to the payment of the

fine and costs standing against the person breaking the same. (Laws 1881, ch. 127, sec. 3.)

§ **48.** In case when a prisoner shall so desire, and shall enter an undertaking to the proper county, with good and sufficient sureties, to be approved by the county clerk, that he will do a given or specified amount of work on some highway designated by the chairman of the board of county commissioners of the proper county, and in a specified time, in full satisfaction of the said fine and costs charged against the said prisoner, the chairman of the board of county commissioners of the proper county is authorized to accept such undertaking, and direct the jailor to allow such prisoner to leave said jail for the purpose of doing the specified work. Said work may be done under the direction and control of some road overseer designated by the chairman of the board of county commissioners of the proper county; and when said work is done or performed in the manner and in the time designated in said undertaking, the chairman of the board of county commissioners shall so certify on said undertaking, and said prisoner shall then be discharged from all liability for the fine and costs for which he was imprisoned: *Provided*, For any good and sufficient reason the chairman of the board of county commissioners may extend the time for doing the work specified in such undertaking. (Laws 1881, ch. 127, sec. 4.)

§ **49.** In case the prisoner entering into the undertaking shall fail or neglect to do or perform the work or labor specified in the undertaking so given by him, the county attorney shall at once proceed to collect the amount specified in such undertaking, and no defense, except payment or the death of the principal in the undertaking during the time in which such principal was to do such work, shall be allowed. (Laws 1881, ch. 127, sec. 5.)

§ **50.** Prisoners shall be allowed one dollar for each day's work performed by them in good faith under the provisions of this act, or if the prisoner prefer, the board of county commissioners may allow such prisoner a specified sum per cubic yard for breaking stone. The amount so earned by the day or by the cubic yard, when the same shall amount to the sum of the fine and costs, the same shall be deemed a full satisfaction of the fine and costs in the action for which the said prisoner was committed to the jail of the county. (Laws 1881, ch. 127, sec. 6.)

§ **51.** The county shall not be liable for any costs by reason of the provisions of this act, otherwise than as herein pro-

vided, nor shall this act be construed as limiting the board of county commissioners of any county in their right to discharge any person from the jail in the manner as now provided by law. (Laws 1881, ch. 127, sec. 7.)

Damages Received from Railroad Companies.

§ **52.** Whenever, by the construction of any railroad within this State, the crossing of any public highway has been or shall be materially injured, either by excavation or embankments made by said railway company or corporation in the construction of said road, and the said railway company have failed to make good the said crossing, and continue to fail to do so for the space of ninety days after the taking effect of this act, it shall be the duty of the township trustee of the proper township to notify the board of county commissioners of the fact, stating the location of the crossing, the manner in which the crossing has been injured, obstructed, or destroyed, verified by affidavit of at least three of the resident taxpayers of said township. Thereupon it shall be the duty of the board of county commissioners to appoint three disinterested house holders of the county to view the said crossing and assess the damages resulting thereto from the construction of said railway, and shall designate the time of meeting, and shall notify the railway company by written notice, not less than ten days previous to said meeting, to any agent or attorney of said railway company, of their action, stating the time and place at which the said viewers will meet to view the crossing, and assess the damages resulting therefrom. (Laws 1876, ch. 105, sec. 3.)

§ **53.** The viewers appointed under the provisions of the third section of this act shall meet on the day designated, and shall, from actual view, assess the amount of damages resulting to the highway by the construction of said railway; which amount shall not be in excess of the amount of money necessary in their judgment to construct a good crossing, and costs of suit, including the necessary approaches thereto, and shall return to the township trustee a certificate under oath of the amount of damages by them assessed. (Laws 1876, ch. 105, sec. 4.)

§ **54.** It shall be the duty of the township trustee, immediately upon the filing with him of said certificate, to notify the railroad company, by written notice to any agent or attorney of said road, of the amount of damages assessed against it, and demand the payment of the same; and on failure of the

company to pay the amount so assessed for the period of thirty days thereafter, he is authorized to commence an action in any court of competent jurisdiction for the recovery of the amount of damages as aforesaid; and the certificate of the viewers shall be *prima facie* evidence of the amount of damages sustained. (Laws 1876, ch. 105, sec. 5.)

§ **55.** All moneys received under the fifty-fourth section of this act shall become a part of the township fund of the township where the damage was sustained, and shall be used under the direction of the road overseer for making good the damages to the public highway, sustained by reason of the building of said railroad. (Laws 1876, ch. 105, sec. 6.)

Taxes.

§ **56.** The duties of the township trustee shall be: * * * *Eighth*, * * * shall, at the July session of the board of county commissioners, annually, with the advice and concurrence of said board, levy a tax on the property in said township for township, road and other purposes, and report the same to the county clerk, who shall enter the same on the proper tax roll in a separate column or columns, and the treasurer shall collect the same as other taxes are collected; but in a failure of such trusteee and commissioners to concur, then the board of county commissioners shall levy such township, road and other taxes. (Laws 1885, ch. 194, sec. 1.)

§ **57** [21]. The county commissioners of each county may, at the time prescribed by law for levying county taxes, levy a road tax of not more than three mills on the dollar on all taxable property in their respective counties, except the real estate in incorporated cities of over two thousand inhabitants, and the said tax may be paid in labor under the direction of the overseer of the district in which the property is situated by any able-bodied man at the rate of one dollar and fifty cents per day, and the same amount shall be allowed for a two-horse team and wagon, or team and plow.

§ **58** [22]. It shall be the duty of the county clerk, after such tax has been levied, to furnish to each township trustee a list of all the taxable real estate, and persons charged with taxes on personal property within their respective townships, and the amount of road tax chargeable to each tract or person, said list to be furnished on or before the first day of January of each year.

§ **59** [23]. The trustees of the several townships, after receiving the lists mentioned in the preceding section, shall proceed

to make out lists of all the taxable real estate, and of all persons charged with taxes on personal property, with the amount of road tax chargeable to each tract and person within the various road districts, and deliver the same to the overseers of such districts on or before the first day of March of each year.

§ **60.** All road taxes remaining unpaid on the fifteenth day of September shall be returned by the road overseer to the township trustee, or city clerk in such cities of the third class as have township organizations. The township trustee or city clerk shall, on or before the first day of October, return all such delinquent road taxes to the county clerk, who shall charge the same against the respective lands, lots or personal property on the county tax roll for the current year. (Laws 1877, ch. 158, sec. 1.)

§ **61** [26]. The township treasurers shall receive from the county treasurers the road taxes paid within their respective townships, and the same shall be appropriated to the building of bridges and the repairing of roads within their respective townships, and the purchase of the requisite number of scrapers and plows for repairing roads.

ROAD DISTRICTS.

§ **62.** The duties of the township trustee shall be: *First*, To divide his township into convenient road districts, and make such alterations in the same as may be necessary; *Second*, To fill all vacancies in the office of road overseer in his township; * * * *Fifth*, To cause a record to be made, accurately defining the boundaries and number of each road district, as well as all alterations made in such road district or districts, in his township, and the number of road overseers in each township. (Laws 1885, ch. 194, sec. 1.)

§ **63.** Upon the petition of fifty or more freeholders of any municipal township to the trustee of such township, praying that said township be declared a single road district, it shall be the duty of said trustee, and he shall have the power to declare said municipal township a single road district, notwithstanding said township may contain an incorporated city, town, or village, and the order of the trustee entered on record in his office, from the date of the same, shall be evidence of the existence of such district, and said road district shall include such incorporated city, town or village; and thereafter the offices of the district road overseers, where more than one exists in any such township, shall become vacant, and said trustee shall appoint a road overseer for such road district so declared and

created, to hold his office until the next township election, when a road overseer for such road district shall be elected. * * * Said township trustee and road overseer shall discharge such other duties as are or may be imposed by law, not inconsistent with the provisions of this act. And for the purpose of repairing the roads leading into any city, town, or village, any two adjoining townships, or any adjoining city and township, may, for the purpose of forming a single road district, consolidate by the assent of the legally-constituted authorities of such townships, or such adjoining city and township, entered on record; and the said authorities of the townships, or city and township, so consolidated shall appoint a road overseer for said road district, as provided in this section. (Laws 1872, ch. 174, sec. 1.)

§ **64.** That in case where a municipal township has been made and declared a single road district, pursuant to chapter 174 of the Session Laws of 1872, it shall be the duty of the trustee of such township, upon the petition of fifty or more freeholders of the township, asking that the township be divided into two or more road districts, to divide the same into two or more districts; and the order of the trustee, entered on record in his office, from the date of the same, shall be evidence of the boundaries of the districts thus formed. That the trustee of any such township shall have the power to appoint road overseers in all the new districts thus created until the next township election, when road overseers for such new districts shall be elected; and such overseers shall have the same powers and discharge the duties conferred by law upon road overseers. (Laws 1883, ch. 149, sec. 1.)

§ **65** [16]. Each incorporated city of more than six hundred inhabitants shall constitute a separate road district, and the corporate authorities of such corporation shall have power to appoint a road overseer for such corporation, fix his term of office and compensation, and remove him from office for any misconduct, and shall require him to give bond, with good security, to the proper corporation for the faithful discharge of his duties, and for the safe-keeping and proper use of any money that may come into his hands, and to disburse the same in the manner directed by the corporation; and such overseers shall do and perform all the duties in the same manner and under the same instructions and limitations as are provided for the government of overseers in this act, except as herein otherwise provided; and the said corporate authorities of any such city are authorized and empowered to use the two days'

work provided for in this act, or the money paid by persons in the discharge of the same, in paving, macadamizing or grading the streets or alleys in such city in any manner provided by ordinance or resolution of any such corporation: *Provided*, Such work or money shall be applied first to the most public streets not macadamized or graded, and that the work required to be done as provided for in this act shall be done between the 1st day of April and the 1st day of October of each year; and any such city shall have the power to pass any by-law or ordinance necessary to carry out fully the provisions of this act.

TOWNSHIP COMMISSIONERS OF HIGHWAYS.

§ **66.** The township trustee, clerk and treasurer of each municipal township in the State shall constitute a board of commissioners of highways and township auditing board for their respective townships. (Laws 1885, ch. 168, sec. 1.)

§ **67.** The trustee shall be the chairman, and the township clerk shall be the clerk of said board. (Laws 1885, ch. 168, sec. 2.)

§ **68.** The said board shall hold regular meetings at the office of the township clerk, on the second Saturday after the election of township officers, and on the last Saturday of January, April, July and October in each year, and special meetings as occasion may require, at the call of the chairman or any two of the commissioners; and no official business shall be transacted except at a regular meeting or at a special meeting of which all the commissioners shall have had notice. (Laws 1886, ch. 140, sec. 1.)*

§ **69.** The clerk of said board shall keep a record of all the official acts and proceedings of the board, in a well-bound book, to be provided by the township for that purpose, which record shall be signed by the chairman and clerk. (Laws 1885, ch. 168, sec. 4.)

§ **70.** The said board shall have charge of the roads and bridges of their respective townships, and it shall be their duty to keep the same in repair, and to improve them so far as practicable. Whenever the available means at their disposal will permit, they shall construct permanent roads, beginning where most needed. The work on roads shall be done timely, and in accordance with the best known methods of road-making—

* By reference to section 1, ch. 234, Laws 1887, it will be seen that the quarterly sessions of this board and of the township auditing board are now to be held on different days; the auditing board is to meet on the last *Monday* of January, April, July and October.

by proper grading and thorough drainage, by tile, or otherwise, as may be expedient, or by the application of gravel, rock, or other material. (Laws 1885, ch. 168, sec. 5.)

§ **71.** In order to insure efficiency, they may employ a general superintendent outside of their own body to work and execute their orders, or they may let contracts, appoint overseers, employ laborers, or such other agencies as they may deem expedient and most to the interest of the township: *Provided*, No contract shall be let under the provisions of this act, except to the lowest responsible bidder, nor until after at least three publications in the county paper. (Laws 1885, ch. 168, sec. 6.)

§ **72.** In letting contracts, employing labor, or in purchasing tools, machinery, or materials, the commissioners shall not have, directly or indirectly, any personal, pecuniary interest in connection therewith. The commissioners shall not have power to let any contract, purchase tools, machinery or materials, except as ordered by the board at an authorized meeting. (Laws 1885, ch. 168, sec. 7.)

§ **73.** The board of commisioners of highways, mentioned in this act, shall each receive for their services the sum of two dollars per day for the time actually and necessarily spent by them as such commissioners. (Laws 1885, ch. 168, sec. 8.)

UNOPENED ROADS VACATED.

§ **74.** Any county road or part thereof, which has heretofore or may hereafter be authorized, which shall remain unopened for public use for the space of seven years at any one time after the order made or the authority granted for opening the same, shall be and the same is hereby vacated, and the authority granted for erecting the same is barred by lapse of time; and any State road or part thereof, which has heretofore or may hereafter be authorized, which shall remain unopened for public use for the space of ten years after the passage of the act authorizing the same, shall be vacated, and the authority for opening it repealed for non-use. (Laws 1879, ch. 150.)

IMPROVEMENT OF COUNTY ROADS.

§ **75.** That whenever a majority of the resident landholders within one-half mile on either side along the line of any regularly laid out road within the terminal points mentioned in the petition shall petition the board of county commissioners of any county in this state for the improvement of any road as located, or any part thereof, it is hereby made the duty of

such county commissioners to cause the same to be improved, as hereinafter provided. (Laws 1887, ch. 214, sec. 1.)

§ **76.** Such petition shall state: First, the name of the road, any part of which is sought to be improved; second, the points between which said improvements are to be made; third, the kind of improvements prayed for; and fourth, the time for which assessments in payment thereof are to be made, not to exceed five years. (Laws 1887, ch. 214, sec. 2.)

§ **77.** Upon receipt of such petition, the said county board shall immediately cause an accurate survey of such roads to be made by the county surveyor, with a careful estimate of the cost of such improvements, with specifications for the improvement of the same, together with a map showing the several tracts of land within one-half mile on either side of said proposed improvement, and cause the same to be filed in the office of the county clerk of the county. (Laws 1887, ch. 214, sec. 3.)

§ **78.** Immediately upon the completion and filing of such profile and map, the said county board shall appoint three persons, resident land-owners of the county, to be known as road commissioners, whose duty it shall be to take charge of and conduct the improvement of such road in conformity with the profile and specifications so filed as aforesaid. (Laws 1887, ch. 214, sec. 4.)

§ **79.** The persons so appointed as road commissioners before entering upon their duty shall take and subscribe to an oath, before some person authorized to take depositions, to faithfully perform their duties as such road commissioners; and upon failure of said commissioners, or either of them, to duly and faithfully perform their duty under this act, the board of county commissioners of the county shall remove the commissioner or commissioners so failing in duty, and appoint others in their stead. (Laws 1887, ch. 214, sec. 5.)

§ **80.** The said road commissioners are hereby authorized and empowered to make contracts for doing the work required in making such improvements, and shall take from such contractor or contractors bonds in double the amount of the contract price, running to the county in which such work is done, for the faithful performance of such contracts; and in payment of any work so done said commissioners shall issue certificates payable in the time mentioned in the petition filed for the improvement of such road, or for any material furnished for the same, bearing interest at the rate of seven per cent. per annum; such contracts to be let in all cases to the

lowest bidder after due notice given: *Provided*, That no such commissioner shall be such contractor, or in anywise interested in any such contract, or any work done thereunder. (Laws 1887, ch. 214, sec. 6.)

§ **81.** Said commissioners shall select one of their number as chairman and one secretary, and they shall keep and file with such county clerk a complete record of their proceedings hereunder, and may appoint one of their number, or any other suitable person, as superintendent, to oversee and direct all work done hereunder, who shall receive from the county board pay not to exceed two dollars and fifty cents per day for the time actually employed in overseeing said work, such account to be verified under oath as other claims against the county; and such commissioners shall receive the sum of two dollars and fifty cents per day for the time actually necessary for the performance of the duties hereunder, which claim shall be submitted and paid as other claims against said county. (Laws 1887, ch. 214, sec. 7.)

§ **82.** Upon the completion of any improvement hereunder, said commissioners shall meet at the office of the county clerk and apportion two-thirds of the cost thereof among the several tracts of land designated in the map filed as aforesaid, according to the benefits to the real and personal property within the limits shown by said map derived from such improvement; and shall, in making such apportionment, take into consideration the benefits accruing to each tract of land, and give credit for damages occasioned to the same; and such assessment shall be in lieu of all road-tax assessments upon the land described in the petition and map for the time such special assessments are levied; one-third of the costs thereof to be paid out of the general fund of the county: *Provided*, That any person feeling himself aggrieved by the apportionments so made may, within five days thereafter, appeal to the board of county commissioners of such county, and their decision shall be final. (Laws 1887, ch. 214, sec. 8.)

§ **83.** And upon the completion of such apportionment of the costs of improvement aforesaid, the county clerk shall enter the same upon the duplicate tax rolls of the county, and such cost shall be collected as other taxes. (Laws 1887, ch. 214, sec. 9.)

§ **84.** The certificates for work done on any such road, issued by the said board of commissioners, shall be received by the county treasurer in payment of any tax levied under this act. (Laws 1887, ch. 214, sec. 10.)

§ **85.** All necessary bridges along the line of any such road shall be built as now provided by law; and the expenses of surveying, locating and mapping such road shall be paid by the respective counties, and the fee therefor shall be the same as fixed by law for other county work. (Laws 1887, ch. 214, sec. 11.)

PART III.

Forms and Record Entries

FORMS AND RECORD ENTRIES.

ROAD PETITION.

To the honorable the Board of County Commissioners of the County of.....:

The undersigned respectfully petition your honorable body to lay out, establish and open to public travel in said county a public road, as follows: (Insert a description of the proposed road, giving the beginning, intermediate points, if any, and course, sufficiently full and clear to enable a practical surveyor to run it,) and we respectfully represent that each of us is a householder of said county, residing in the vicinity where said road is proposed to be laid out, and that said road, if so laid out, will be of public utility.

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STATE OF KANSAS,.....COUNTY, ss.

....., one of the above petitioners, being by me first duly sworn, deposes and says, that each of the persons whose names are signed to the foregoing petition, including affiant, resides in the vicinity where said road is proposed to be laid out, is of the full age of twenty-one years, and occupies a house in said vicinity, in said county, as a place of residence, and not as a boarder or lodger, and is a householder of said county; and that the signatures to the said petition are the genuine signatures of the said several petitioners, made personally by themselves, respectively.

.....

Subscribed and sworn to before me, this.....day of.....A. D. 188...

[SEAL.] .....

County Clerk.

BOND.

(*Name all the petitioners*) as petitioners, being about to present to the board of county commissioners of the county of.....in the State of Kansas, their certain petition signed by them, praying said board to (establish, alter, vacate, or relocate, as the case may be,) a certain road in said county, described in said petition as follows: (Describe the road:) Now, therefore, we,.....as principal..., and

.....

as suret....., do hereby bind ourselves firmly by these presents, and do promise to pay to the State of Kansas, for the use of said county of..... ....., the amount of all costs and expenses that may accrue on or in the proceedings upon and under said petition, in case the proceedings had in pursuance of said petition shall not be finally confirmed and established: *Provided, however*, And this obligation is upon this express condition, to wit: that if the said above-named petitioners shall, in case the said proceedings had in pursuance of said petition shall not be finally confirmed and established, themselves pay into the treasury of the said county of.....the amount of all said costs and

expenses when and if the same shall become due and payable by them, then this obligation to be void; otherwise to be and remain in full force and effect.

Witness our hands, this.....day of....., A. D. 188....

.....

.....

.....

.....

.....

This bond is hereby approved by the board of county commissioners of the county of ....., in regular session, this.....day of..... ..... A. D. 188....

By order of the Board,

.....

Chairman.

.....

County Clerk.

ORDER UPON PETITION.

Came this day.....principal petitioner therein, and presented to the board of county commissioners a certain petition, which was in words and figures as follows, to wit: (Here copy petition and signatures in full,) and upon examination and consideration thereof the said commissioners do find that the said petition is a legal one; that the signatures thereto are genuine; that the said petitioners whose names are signed to said petition all reside in the vicinity where said road is to be.....; and are all householders of.....county; *and that..... one of said petitioners, has duly entered into a bond, with security satisfactory to and approved by said commissioners, payable to the State of Kansas for the use of said..... ..... county, conditioned that the persons signing the said bond shall pay into the treasury of the said county the amount of all costs and expenses accruing on said ....in case the proceedings had in pursuance of said petition shall not be finally confirmed and established; and it is, therefore, by the said board of county commissioners

ORDERED, that.....and..... and....., who are disinterested householders of said county, be and they are hereby apppointed viewers of the said road so by said petition prayed to be....., and that the county clerk do forthwith notify each of them in writing of their said appointment; and it is further

ORDERED, that the said viewers shall meet at (describing place on line of proposed road where they are to meet,) on the.....day of.....A. D. 188..., and proceed to the discharge of their duties, and that the county surveyor be and he is hereby ordered and directed to meet with the said viewers at the said time and place, and survey said proposed road under their direction, and that an order be issued to him to that effect; and it is further

ORDERED, that the county clerk, by advertisement set up in his office, and in the township... of.....through which township... said road is prayed to be laid out, for at least twenty days, and by publication for two consecutive weeks in the..... ....., a newspaper published in said county, shall give notice, and complete the same in said manner at least twenty days before the date hereinbefore fixed for said viewers to meet, setting forth that said petition has been presented, and the substance thereof; and that viewers will, on the day hereinbefore fixed, proceed to view said road and give to all parties a hearing; and it is further

ORDERED, that a record of said notice so to be given, and as given by the said county clerk, be entered upon the journal of the proceedings of said board of county commissioners, and the said county clerk is hereby ordered and directed to enter the same thereon.

*This finding is necessary. See 18 Kas. Rep. 132, 398.

ROAD NOTICE.

To Whom it may Concern:

In pursuance of an order made by the board of county commissioners, in regular session, on the.....day of.....A. D. 188..., notice is hereby given that.....
.....
.....
householders of said county, residing in the vicinity where it is proposed to.....
the road below mentioned, have presented to said board their certain petition, praying the .....of a public road, as follows: (here copy description from petition), and that ....., ... and ....., viewers duly appointed, will meet at....., on the.....day of..... A. D. 188..., and proceed to view said road, and to give all parties a hearing.

Witness my hand, and the seal of said county, affixed at my office in said..... county, this.....day of.....A. D. 188...

[SEAL.] .....

[The clerk should enter a copy of this notice upon the journal.]

NOTIFICATION TO VIEWERS OF APPOINTMENT.

To..... ....., ...and.....:

You are hereby notified that, by an order of the board of county commissioners of the county of....., made on the.....day of.....A. D. 188..., you were duly appointed viewers to view the following road, which has been petitioned for, to wit: (describe road,) and you were, by said board, ordered to meet at (point fixed,) on the.....day of.....A. D. 188..., at which time and place the county surveyor will meet with you, and proceed to the discharge of your duties as such viewers.

By order of the board.

Witness my hand, and the seal of said county, this.....day of.....

A. D. 188... .....

[SEAL.] *County Clerk.*

ORDER TO SURVEYOR TO MEET VIEWERS.

To....., County Surveyor of the County of.....:

At a meeting of the board of county commissioners of the county of....., on the.....day of.....A. D. 188..., ..., ... and.....were appointed viewers to view a certain proposed road petitioned for, to wit: (describe road,) and they were ordered to meet for that purpose at (point fixed,) on the..... day of.....A. D. 188..., and the said board directed that an order issue to you directing you to meet with said viewers, at said time and place. You are therefore directed to meet with said viewers at said time and place, and proceed to the discharge of your duties in that regard, as provided by law.

By order of the board.

Witness my hand, and the seal of said county, this.....day of.....

A. D. 188... .....

[SEAL.] *County Clerk.*

ALIAS ORDER FOR VIEW.

[If the viewers fail to meet, and the commissioners are so advised, the following order should be made and entered:]

And now comes the said....., principal petitioner herein, and shows to the said board of county commissioners that the viewers heretofore appointed to view said proposed road and report thereon did not meet on the day designated by the said board, nor on the following secular day; and thereupon, upon application of the said petitioner, and the said board being satisfied that the said viewers did so fail to meet, it is by said board hereby

ORDERED, That the said..... ....., ...

and....., heretofore appointed viewers herein, do meet at (describing place on line of proposed road where they are to meet,) on the.....day of .....A. D. 188..., and proceed to the discharge of their duties; and that the county surveyor be, and he is hereby, ordered and directed to meet with the said viewers at the said time and place, and survey said proposed road under their direction, and that an order be issued to him to that effect; and it is further

ORDERED, That the county clerk, by advertisement set up in his office, and in the townships of..... through which townships said proposed road is prayed to be laid out, for at least twenty days, and by publication for two consecutive weeks in the..... a newspaper published in said county, shall give notice, and complete the same in said manner at least twenty days before the date hereinbefore fixed for said viewers to meet, setting forth that said petition has been presented, and the substance thereof, and that viewers will, on the day hereinbefore fixed, proceed to view said road, and give all parties a hearing; and it is further

ORDERED, That a record of said notice so to be given, and as given by the said county clerk, be entered upon the journal of the proceedings of said board of county commissioners, and the said county clerk is hereby ordered and directed to enter the same thereon.

[The clerk will then give notice and make up his record precisely as if a new petition had been presented.]

NOTICE TO LAND-OWNER OF VIEW.

To.....

You are hereby notified that (principal petitioner) and others, being householders of said county residing in the vicinity of said proposed road, lately presented to the board of county commissioners of the county of....., in the State of Kansas, their petition praying that a road might be established as follows: (describing the road,) which road, if established, will run through certain lands in said county owned by you, to wit: (describe his tract generally); and that at a meeting of said board on the.....day of.....A. D. 188..., viewers were duly appointed to view said road, and were ordered to meet at (point fixed), on the.....day of.....A. D. 188... and proceeed to the discharge of their duties. You will therefore take notice of the meeting and proceedings of said viewers.

.....188... .....

One of said petitioners.

AFFIDAVIT OF SERVICE.

STATE OF KANSAS,.....COUNTY, SS.

.....being first duly sworn, deposes and says that on the.....day of.....A. D. 188..., he ("delivered personally to .....," or, "left for him at his usual place of res dence in said county, and with an adult member of his family,") a notice to the said..... ....., of which the within is a true copy.

.....

Subscribed and sworn to before me, this.....day of.....A. D. 188...

.....

County Clerk.

WAIVER OF NOTICE.

....., as principal petitioner, and others, having petitioned the board of county commissioners of.....county, Kansas, to establish a certain road, as follows: (*describe road as in petition;*) which proposed road will run through lands owned by us, or represented by us, respectively, and notice having been published and viewers appointed under said petition, we, whose names are signed below, hereby

waive the service of the written notice required by law to be served by petitioners upon land-owners in such cases.

....
Guardian of *Owner of lot 5, 10, 17.*

..... } *Minors.* .....
..... *Resident agent of*.....
..... *owner of E½ S. W.¼ 10, 12, 17.*
Owning the N. W.¼, Sec. 12, T. 13, R. 17. }

AFFIDAVIT.

STATE OF KANSAS,.....COUNTY, SS.

.....being by me first duly sworn, deposes and says that the several signatures appended to the foregoing waiver of notice are the genuine signatures of the several persons respectively whose signatures they purport to be, and were affixed by the parties themselves in affiant's presence.

.....

Subscribed and sworn to before me, this.....day of.....A. D. 188...

.....
County Clerk.

LAND-OWNER'S APPLICATION TO VIEWERS.

To..... .....

road viewers appointed to view the road petitioned for by (principal petitioner) and others, beginning (describe beginning of proposed road) and ending..... in.....county in the State of Kansas:

Said proposed road will, if established, run through and upon the following described premises situate in said county and of which premises I am the owner, to wit: (Here describe the tract, quarter-section or otherwise,) and will cause injury thereto; and I hereby claim damages and compensation accordingly, and hereby apply to you as such viewers to assess, determine and award to me the amount of damages to which I am entitled, and which I hereby allege and claim to be $.....

....., ...188... .....
Owner of said premises.

REPORT OF VIEWERS IN FAVOR OF ROAD.

To the honorable the Board of County Commissioners of.....County, in the State of Kansas:

The undersigned, who were by order of your said board, made on the.....day of .....A. D. 188..., duly appointed viewers of a certain road which (naming the petitioners) had by their petition to your said board, prayed might be established, and which proposed road was described in said petition as follows: (description of road as in petition,) duly met with the county surveyor at the beginning of said proposed road, as above described, on the.....day of.....A. D. 188..., and having been, each of us, first duly sworn as such viewers, proceeded to view, survey and lay out said proposed road, as nearly as prayed for in said petition as a good road can be made at a reasonable expense; and caused the county surveyor, under our direction, to survey said road as laid out by us, and to conspicuously mark the same throughout, noting the courses and distances; and having so done, and having taken into consideration the utility, convenience and inconvenience, and expense, which will result to individuals, as well as to the public, if such road shall be established and opened, we hereby report that said road should be established and opened, and that the same is necessary and will be of public utility, and we hereby report in favor of the establishment of said road for the following reasons:

[These, of course, are but suggestions for assigning reasons.]

First: It is necessary to enable those living in the vicinity thereof to travel to and from the county seat of said county, as witnesses or jurors in courts, or on any private or public business, or for purposes of traffic.

Second: It is necessary to enable the persons living in the vicinity thereof, and who are electors, to travel to and from the place of voting in their precinct.

Third: It is necessary to enable the persons living in the vicinity thereof to travel to and from the postoffice at which they deliver and receive their mails, newspapers, &c.

Fourth: It is necessary to enable the children of the persons living in the vicinity thereof to reach the public school house of their district.

Fifth: It is necessary to afford John Randolph, living in the vicinity thereof, a means of egress from his farm to the public highway, and without said road he has no means, but by sufferance of his neighbors, of traveling to and from the county seat of said county, to the public school of his district, to the postoffice where his mail is delivered and received, nor to the voting place of his precinct.

Sixth: Said road will be of public utility, by enabling persons to travel between the county seat of said county and the lands through which said road will run; and because it connects two other public roads with each other, heretofore disconnected in such a way as to deprive many persons of the benefit of either.

Seventh: Because the expense of establishing said road will not be unreasonably large as compared with the convenience and public utility which will result therefrom.

Witness our hands, this..... .....day of.....A. D. 188...

.....

.....

.....

Viewers as aforesaid.

REPORT OF VIEWERS AGAINST ROAD.

To the honorable the Board of County Commissioners of.....County, in the State of Kansas:

The undersigned, who were by order of your said board, made on the.....day of .....A. D. 188..., duly appointed viewers of a certain road which (naming the petitioners) had, by their petition to your said board, prayed might be established, and which proposed road was described in said petition as follows: (description of road as in petition,) duly met with the county surveyor at the beginning* of said proposed road as above described, on the.....day of.....A. D. 188..., and having been, each of us, first duly sworn as such viewers, proceeded to view, survey and lay out said proposed road, as nearly as prayed for in said petition as a good road can be made at a reasonable expense; and caused the county surveyor, under our direction, to survey said road as laid out by us, and to conspicuously mark the same throughout, noting the courses and distances; and having so done, and having taken into consideration the utility, convenience and inconvenience, and expense, which will result to individuals as well as to the public, if such road shall be established and opened, we hereby report that said road should not be established and opened, and that the same is not necessary, and will not be of public utility; and we hereby report against the establishment of said road, for the following reasons: [Hints as to proper mode of assigning reasons.]

First: Said road is not necessary to enable any person living in the vicinity thereof to reach the county seat of said county, his local postoffice, the public school house of his district, nor the voting place of his precinct, nor his nearest town for traffic, over a public highway, but said persons can already reach all of said places without any serious delay or inconvenience, by traveling entirely over the public highway already laid out, established and opened to travel; and no person in the vicinity of said road needs it as a means of egress from his land to an established public highway; but every person living in the vicinity of said proposed road already has easy egress from his lands immediately to and upon an already opened and traveled public highway.

Second: While some such road is necessary to the convenience of the people living in the vicinity of the proposed road, and would be of public utility, yet the road as proposed would involve too great an expense to the county to justify its establishment.

*Or wherever the notice fixed for the place of meeting.

Third: That while some such road is necessary to the convenience of the persons living in the vicinity of said proposed road, and would be of public utility, yet this road as proposed will run through (a cemetery or a private burying ground, or will destroy or needlessly injure a grove, or park, or pleasure ground,) on the premises of John Hancock, which injury to the owner thereof no mere damages can adequately compensate, while a road could just as conveniently be laid out that would serve the same purpose, and be just as beneficial and of as much public utility, without causing any such injury to any person.

Witness our hands, this.....day of.....A. D. 188...

.....
.....
.....

[If a marker or chain carriers have been employed, attach to the report the following certificate before the place for signing the report]:

We further report that, before proceeding with said view and survey, we deemed necessary to take, and did take, to our assistance.....and..... two suitable persons, as chain carriers, and.....also a suitable person, as marker, and that each of said persons was, under our direction, necessarily and actually employed in said view and survey.....days, for which they are severally entitled to compensation.

SEPARATE REPORT AS TO ASSESSMENT OF DAMAGES.

To the honorable the Board of County Commissioners of.....County, in the State of Kansas:

The undersigned, who were by an order of the said board, made on the.....day of .....A. D. 188..., appointed as viewers of a certain road which (names of petitioners) by their petition to said board had prayed might be established, and which road was in said petition described as follows: (copy description of road from petition,) being, each of us, first duly sworn, having duly made said view and survey, now file our report thereon, and together therewith, hereby make, file and submit our separate report of the damages assessed by us to land-owners through whose lands said proposed road will run if established; and we hereby report that we assessed such damages upon all applications made to us in writing, and we submit herewith the written applications upon which said assessments were made by us. We so assessed damages as follows:

	Dolls.	Cts.
In favor of.....	.....	.....
" "	.....	.....
" "	.....	.....
" "	.....	.....
" "	.....	.....
Total damages as assessed.....	.....	.....

Witness our hands, this.....day of.....A. D. 188...

.....
.....
.....

Viewers as aforesaid.

ORDER ON FAVORABLE REPORT.

This day the petition of..... for the establishment of a road as follows: (copy description from petition,) came on to be further heard upon the certified return of the survey thereof, the plat, the report of the viewers, and the separate report of said viewers of the damages assessed by them, and the said return, plat and reports having all been duly delivered to and filed by the county clerk heretofore, and having been received by the board of county commissioners, and said board having caused the same to be read before its meeting, and having considered the same; and the report of said viewers being favorable to said road, and no legal objection to

said report appearing, and the said board being satisfied that said road will be of public utility, it is, by said board of county commissioners

ORDERED, That said report, survey and plat be duly recorded by the county clerk upon the road record of said county; and that said road be and it is hereby declared and shall be considered a public highway; and it is further

ORDERED, That the trustees of..... townships, respectively, in which townships said road is located, be and they are severally and respectively ordered and directed to cause said road within their respective townships to be opened for public travel; and that an order to this effect be issued to each of said trustees.

ORDER ON UNFAVORABLE REPORT.

This day the petition of..... for the establishment of a road as follows: (copy description from petition,) came on to be further heard upon the certified return of the survey thereof, the plat, the report of the viewers, and the separate report of said viewers of the damages assessed by them, and the said return, plat and reports having all been duly delivered to and filed by the county clerk heretofore, and having been received by the board of county commissioners, and said board having caused the same to be read before its meeting, and having considered the same, and the report of the said viewers being against said proposed road, and said report being, in the opinion of said board, a just one, and it being the opinion of said board that said road, as applied for, is unnecessary, it is by the said board of county commissioners

ORDERED, That no further proceedings shall be had upon said petition; and it is further

ORDERED, That the county clerk do demand and collect of the obligors in the bond given by the principal petitioner herein the full amount of all costs accrued by reason of the view of said road; and upon neglect or refusal of said obligors so to pay, the county clerk shall proceed to collect the said costs by action upon said bond, and when collected, with or without action, the county clerk is ordered to pay said costs into the county treasury of said county.

ORDER TO TOWNSHIP TRUSTEE TO OPEN ROAD.

To....., Trustee of.....Township, in the County of.....:

At a meeting of the board of county commissioners, on the.....day of..... A. D. 188..., the following road, (describe road,) for which....., principal petitioner, and others, had petitioned, was established; and it was by said board thereupon ordered that an order issue to you as trustee, directing you to cause said road, so far as the same lies in your said township, to be opened to public travel: Now, therefore,

You, the said....., as trustee as aforesaid, are hereby ordered and directed to cause the above-described road, so far as it lies in your said township, to be duly opened to public travel.

By order of the board of county commissioners.

Witness my hand, and the seal of said county, this.....day of..... A. D. 188...

.....

[SEAL.] *County Clerk.*

ORDER OF TRUSTEE TO OVERSEER TO OPEN ROAD.

To....., Road Overseer of Road District No....., ...Township:

The board of county commissioners having ordered me, as trustee, to cause the following road recently established, to wit: (describe road,) so far as it lies in said..... .....township, to be opened to public travel, you are therefore directed to open to public travel, as provided by law, so much of said road as lies within your said district.

.....A. D. 188...

.....

Township Trustee.

OVERSEER'S NOTICE.

To.....:

The road petitioned for by (principal petitioner,) and others, and which runs through a portion of your lands, to wit: (describe the tract of land the party owns, and through which the road runs,) situated in.....township, ...county, Kansas, was on the.. .....day of.....A. D. 188..., duly established by the board of county commissioners of said.....county, and said board has ordered the trustee of said township to cause said road to be opened to public travel. You are therefore notified to open said road through your said lands, as surveyed and marked by the county surveyor of said county, under the direction of the viewers of said road, within *ninety days from the service hereof*, (or, *on or before the first day of January next*,) or it will become my duty to enter, or to depute some one to enter, upon said lands and open said road.

Witness my hand, this.....day of.....A. D. 188...

....., *Road Overseer*,

Of District No....., *of*.....*Township*, ...*County*.

RECEIPT OR CERTIFICATE FOR MATERIAL TO REPAIR ROADS AND BRIDGES.

STATE OF KANSAS, ...COUNTY, ...TOWNSHIP, SS:

I, the undersigned, road overseer of road district No....., in said township, hereby certify that I did, on the.....day of....., for the purpose of repairing a.....in the road in said district, take away the following described and valued material belonging to one....., to wit:

Description and quantity of material, (give items): .....

.....

.....

Value thereof: $.....

.....

Road Overseer.

ANNUAL REPORT OF ROAD OVERSEER.

Annual report of....., road overseer of road district No....., in.....township, in.....county, Kansas, for the year ending March 20, 188..., to.....township board:

First: Report of the names of persons subject to the two days' road tax for the preceding year; the names of those who have worked out said tax; the names of those who have paid said tax in money; and the names of those delinquent:

Persons subject to the two days' road tax for preceding year.	*Persons who have worked out the said tax.*	*Persons who have paid said tax in money.*	*Persons who are delinquent.*
.....	.....	.....	.....

Second: Account of all moneys received by him from all sources, and how expended:

RECEIPTS AND DISBURSEMENTS.

Date of Receipt.	*From whom Received.*	*Kind of Fund.*	*Amount.*	*Date of Disbursement.*	*Number of Order.*	*In whose Favor.*	*For what Purpose.*	*Kind of Fund.*	*Amount.*

Third: Account of work performed by himself:

When work performed.	*Where work performed.*	*Kind of work performed.*
.....	.....	.....

STATE OF KANSAS, ...COUNTY, ss.

I, the undersigned, do solemnly swear that I am the above-mentioned overseer, and that the foregoing report and account is in all respects true and correct, and that it contains the full and true account of all moneys received by me during the full period of the year ending....., 188..., and for the time for which I should make such statement of account. So help me God. .....

Road Overseer.

Subscribed and sworn to before me, this.....day of.....188...

.....

PETITION FOR IMPROVEMENT OF ROAD.

To the honorable the Board of County Commissioners of.....County, in the State of Kansas:

The undersigned respectfully represent that the following road, to wit: *..... .....is a regularly laid out road within the said county of.....and that your petitioners constitute a majority of the resident landholders within one-half mile on either side along the line of said road †.....; and they respectfully petition your honorable body for the improvement of said road ‡..... .....under and in accordance with the provisions of the act entitled "An act providing for the improvement of county roads," approved March 5, 1887, and in the following manner, to wit: §..... and that the assessments for the payment thereof shall be made in equal annual installments during and extending through a period of.....years from the completion of said improvements.

.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
Petitioners.	*Petitioners.*

*Here describe the road by name or otherwise in such a way that any one can tell just what road is meant.

†If only a part of the road is to be improved, add here, "and within the terminal points hereinafter mentioned."

‡"Throughout the entire length thereof;" or if only a part is to be improved, then, "between the following terminal points, to wit," giving a clear designation of them.

§Here give a full, clear and definite statement and description of the kind of improvement desired. This is extremely important, for when once the proceedings have begun, nobody has power to make any change whatever in the nature or kind of improvements. The improvements must be precisely as described in the petition.

CLERK'S ENTRY ON JOURNAL.

Came this day.....and others, petitioners therein, and presented to the board of county commissioners a certain petition for the improvement, under and in accordance with the act entitled "An act providing for the improvement of county roads," approved March 5, 1887, of a certain regularly laid out road within said county, to wit: * .....; and the said board having found the said petition to be in all respects proper and regular in form and in substance, and being satisfied upon due inquiry made that the signatures of the petitioners whose names are affixed to said petition are their genuine signatures affixed by themselves, and that said petitioners constitute a majority of the resident landholders within one-half mile on either side along the line of said road† ..... it is, therefore, by the said board of county commissioners

ORDERED, That the county surveyor of said county be and he is hereby directed to make an accurate survey of said road, with a careful estimate of the cost of the improvement in said petition proposed, and specifications for said improvement, and file the same with the county clerk, together with a map showing the several tracts of land within one-half mile on either side of said proposed improvement; and that he proceed therein with all practicable expedition; and the county clerk is hereby ordered to notify said county surveyor accordingly.

ENTRY OF APPOINTMENT OF ROAD COMMISSIONERS.

And now the county surveyor, in accordance with the order heretofore made so directing, having completed his duties as to the survey, estimates, specifications and map of the road petitioned by.....and others to be improved under the act approved March 5, 1887, providing for the improvement of county roads; and having filed in the county clerk's office the profile, map, estimate and specifications required; it is now by the said board of county commissioners

ORDERED, That....., ... and ...., resident landowners of said county, be and they are hereby appointed road commissioners to take charge of and conduct the said improvement of said road in conformity with the profile and specifications so filed as aforesaid, and to otherwise discharge the duties of road commissioners as to said improvement, according to said act for the improvement of county roads; and the county clerk is hereby directed to notify said road commissioners of their said appointment.

---

* Copy the description of the road from the petition.

† If part of road only, then add here, "within the terminal points mentioned in said petition."

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